

***United States Court of Appeals
for the Second Circuit***



APPENDIX

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

ORIGINAL

75 - 7390

NORI SINOTO,

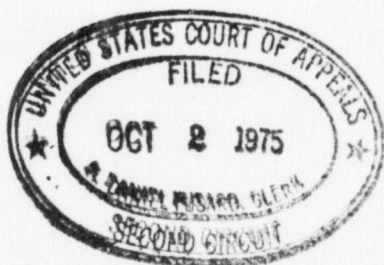
Plaintiff-Appellant,
-against-

B P/S

DEVCO MANAGEMENT and DEIGHTON O. EDWARDS,
Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES
DISTRICT COURT FOR THE SOUTHERN
DISTRICT OF NEW YORK

APPELLANT'S APPENDIX



SCHWENKE & DEVINE
Attorneys for Plaintiff-
Appellant
Office & P. O. Address
230 Park Avenue
New York, New York 10017
Telephone: (212) 725-5360

MARVIN I. EDELSTEIN
Attorneys for Defendants-
Appellees
Office & P. O. Address
55 Liberty Street
New York, New York 10005
Telephone: (212) 732-9656

PAGINATION AS IN ORIGINAL COPY

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DOCKE. TRIES

CIVIL DOCKET
UNITED STATES DISTRICT COURT

Jury demand date:

JUDGE IRVING
73 CIV. 25

D. C. Form No. 106 Rev.

TITLE OF CASE

ATTORNEYS

MORI SINGO,

Vc.

DEVOO MANAGEMENT, INC. and
DEIGHTON O. DOMANOS, JR.

For plaintiff:

Butowsky, Schwanke & Davino
230 Park Ave.
NYC, NY 10017

212-725-5360

For defendant:

Marvin I. Edelstein
55 Liberty St. NYC 10005-732-9656

6/27

✓

STATISTICAL RECORD

COSTS

DATE

NAME OR
RECEIPT NO.

REC.

DISB.

J.S. 5 mailed

✓

Clerk

6/3/77 But. sec. 5.

11

✓

J.S. 6 mailed

✓

Marshal

6/5/77 6572

5

✓

Basis of Action: For collection
of promissory notes, \$50,000

Docket fee

Witness fees

Action arose at:

Depositions

DATE	PROCEEDINGS	Date Filed
Jan. 3, 73	Filed Complaint. Issued Summons.	
Jan. 3, 73	Filed Pltff's Order appointing person to serve process (Stella T. Kalus.) CLK.	
Feb. 11, 73	Filed Defts' ANSWER to Complaint.	
Feb 16-73	Filed plttf's notice to take deposition of Deighton O. Edwards on 3-2-73.	
Feb 16-73	Filed summons and entered affirmation of service on Devco Management, Inc by Robert J. Nicol on 1-4-73.	
Feb. 22, 73	Filed Pltff's Notice to Produce documents returnable 3/25/73, 3:30 P.M.	
Mar. 1, 73	Filed Pltff's Notice of Deposition of Franklin National Bank. Issued Subpoena.	
Mar. 14, 73	Filed Pltff's Stip & Order Re: plttf's deposition of Deft. Deighton O. Edwards, Jr. is adj from 3/2/73 to 3/21/73, 10:30 A.M. Knapp, J.	
Apr. 30, 73	Filed Notice of motion; Ret. May 11, 73, at 2 p.m. Room 619, Re: for inspection and copying by plttf.	
May 4, 73	Filed Plttf. first set of interrogatories.	
May 16, 73	Filed MEMO END. on motion xxxinapxxxin filed 4/30/73 Re: Inspection and copy. Granted On consent, to the extent indicated in report of Harold J. Raby, U.S. Magistrate. Etc. KNAPP, J.	
Jun 8-73	Filed plttf's notice of motion re: striking answers of defts etc. ret: 6-19-73.	
Jun. 20, 73	Filed MEMO END. on motion filed Jun. 8, 73: Motion denied on condition that within 10 days defts. pay plai iff the sum of \$739.20, and fully comply with the previous order of this Court in relation to discovery. Otherwise motion is granted. *** Etc. SO ORDERED. KNAPP, J.	
Aug. 3-73	Filed Memorandum: The matter is again referred to Magistrate Raby, with the request that he supervise the completion of discovery & report to me on Sept. 10th whether or not in his opinion defts, have in good faith complied with all proper requests & demands, of plttf. On or after Sept. 10th the plttf. may apply for compensation for the expenses occasioned by the deft's delay. So ordered. Knapp, J. m/n	
Oct. 29-73	Filed consent & proposed pretrial order. Knapp, J.	
Feb. 7-74	Filed plttf's affidavit & notice of motion granting him a writ of, attachment against the deft. Devco Management ret. 2-15-74.	
Feb. 15 74	Filed plttf's memorandum in support of motion for a writ of attachment.	
Feb. 13-74	Filed plttf's trial memorandum.	
Mar. 11-74	Before Knapp, J. NoV-Jury trial begun.	
Mar. 12-74	Trial continued & concluded. Judge's decision Reserved.	
Jul. 3-74	3/11-12/74	
Aug. 1-74	Filed OPINION/41045. Plttf, following his customary course, conducted his dealings with defts Edwards in hope of obtaining 50% ownership in successful enterprise. It follows that judgment should enter dismissing complaint. So ordered. Knapp, J. (mn)	
Aug. 30-74	Filed plttf's notice of appeal to the USCA from order filed 8-1-74, dismissing complaint. Mailed copy to Marvin I. Edelstein.	
Sep. 9-74	Filed Judgment: Ordered that the complaint is dismissed on the merits & that costs be awarded to the deft's. Judgment Ent. Clerk.	
Oct. 2-74	Mailed notice Ent. 9-11-74. Filed notice that record on appeal has been certified & transmitted, to the USCA on this 2nd day of Oct. 1974.	
*Sept. 20-74	Filed report of Magistrate Raby.	
1-17-75	Filed certification of record on appeal to USCA 1-17-75	

SUMMONS

SUMMONS IN A CIVIL ACTION

CIV. 1a (2-64)
(Formerly D. C. Form No. 45a Rev. (6-49))

United States District Court

FOR THE

SOUTHERN DISTRICT OF NEW YORK

JUDGE KNAPP

73 CIV. 25

CIVIL ACTION FILE NO.

NORI SINOTO,

Plaintiff

DEVCO MANAGEMENT, INC., and
DEIGHTON O. EDWARDS, JR.

Defendant

SUMMONS

To the above named Defendant :

You are hereby summoned and required to serve upon

BUTOWSKY, SCHWENKE & DEVINE

Plaintiff's attorney, whose address is

230 Park Avenue
New York, New York 10017
212 723 5390

in answer to the complaint which is herewith served upon you, with in 20 days after service of this

summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

18/ JOHN LIVINGSTON
Clerk of Court.
18/ E.A. BECKER
Deputy Clerk.

Date: New York, New York
~~XXXXXXXXXXXXXXXXXXXX~~
January 3, 1973

[Seal of Court]

NOTES: This summons is issued pursuant to Rule 4 of the Federal Rules of Civil Procedure.

I hereby certify that this summons is a true and correct copy of the original.

per me

10

RELINQUISH OR RESERVE OF ALL

COMPLAINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Deighton
1/3/72

----- x
NORI SINOTO,

Plaintiff, :

-against- :

DEVCO MANAGEMENT, INC., :
and DEIGHTON O. EDWARDS, JR., :

Defendant. :
----- x

73 Civ. 25-

COMPLAINT

Plaintiff, Nori Sinoto, by his attorneys, Butowsky, Schwenke & Devine, for his complaint herein alleges:

1. Plaintiff is a citizen of Japan. Defendant Devco Management, Inc. ("Devco") is a corporation incorporated under the laws of the State of Delaware having its principal place of business in the State of New York. Defendant Deighton O. Edwards, Jr. ("Edwards") is a citizen of the State of New York. The matter in controversy exceeds, exclusive of interest and costs, the sum of ten thousand dollars.

2. Defendant Devco on or about April 26, 1972, executed and delivered to plaintiff four promissory notes, copies of which are hereto annexed as Exhibit A.

3. Defendant Edwards endorsed all of the notes, as shown by Exhibit A.

4. Defendants jointly and severally owe to plaintiff the amount of said notes and interest and an attorneys' fee.

WHEREFORE, plaintiff demands judgment against defendants, jointly and severally:

(a) for the sum of \$50,000.00, the total principal amount of the four promissory notes; plus

(b) interest at the rate of 7% on note #1 from April 26, 1972 to June 12, 1972; on note #2 from April 26, 1972 to June 30, 1972; on note #3 from April 26, 1972 to July 20, 1972; and on note #4 from April 26, 1972 to August 9, 1972; plus

(c) post-maturity interest at the rate of 2% per month on note #1 from June 13, 1972 to the date of judgment; on note #2 from July 1, 1972 to the date of judgment; on note #3 from July 21, 1972 to the date of judgment; and on note #4 from August 10, 1972 to the date of judgment; plus

(d) an attorneys' fee as prescribed by the promissory notes in a total amount of \$10,000.00;

(e) together with the costs and disbursements of this action.

BUTOWSKY, SCHWENKE & DEVINE

By Michael C. Devine

A member of the firm
Attorneys for Plaintiff
230 Park Avenue
New York, New York 10017
(212) 725-5360

EXHIBIT A TO PLAINTIFF'S COMPLAINT

\$12,500.00 April 26, 1972
 Forty-five days after date we promise to pay to
 the order of Nori Sinoto
 Twelve thousand five hundred and no/100 -----Dollars
 Payable at Franklin National Bank 15 Columbus Circle, New York, NY 10023

This is note No. 1 of a series of 4 notes. Upon default in the payment of any one of these notes or any other note or notes of the maker and/or endorsers and/or guarantors hereof, held or acquired by holder hereof all of the aforesaid notes shall immediately become due and payable without prior notice or demand.

The makers, endorsers and guarantors of this note hereby waive presentment for payment, demand, notice of non-payment and dishonor, protest, and notice of protest, waive trial by jury in any action or proceeding arising on, out of, under or by reason of this note, consent to any renewals, extensions and partial payments of this note or the indebtedness for which it is given without notice to them, and consent that no such renewals, extensions or partial payments shall discharge any party hereon from liability hereon in whole or in part. If a petition under any provision of the Bankruptcy Act or any other insolvency statute for any relief thereunder shall be filed by or against any maker, endorser or guarantor hereof, then this note and all other existing obligations of every kind of each maker or endorser hereof to the holder hereof shall become immediately due and payable. If this note be not paid when due and if it be placed with an attorney for collection, the maker, makers, endorsers and guarantors agree to pay all costs of collection, including an attorney's fee of 20% of the amount of this note, which is hereby agreed to be just and reasonable and which shall be added to the amount due under this note and recoverable with the amount due under this note. If any endorser or guarantor of this note shall pay the amount of the same to the holder thereof at maturity and thereafter shall place the same with an attorney for collection against the maker, makers, prior endorsers, guarantors or any of them, then they agree to pay to said endorser or guarantor all costs of collection, including an attorney's fee of 20%; which is hereby agreed to be just and reasonable and which shall be added to the amount due under this note and recoverable with the amount on this note. Interest on this note after maturity shall be due and payable at the rate of two per cent per month.

Value Received with interest at 6% 7%

Devco Management Inc.

Alfred J. Fisher

Due June 12, 1972

Chief Executive Officer

\$12,500.00 April 26, 1972
 Sixty-five days after date we promise to pay to
 the order of Nori Sinoto
 Twelve thousand five hundred and no/100 -----Dollars
 Payable at Franklin National Bank 15 Columbus Circle, New York, NY 10023

This is note No. 2 of a series of 4 notes. Upon default in the payment of any one of these notes or any other note or notes of the maker and/or endorsers and/or guarantors hereof, held or acquired by holder hereof all of the aforesaid notes shall immediately become due and payable without prior notice or demand.

The makers, endorsers and guarantors of this note hereby waive presentment for payment, demand, notice of non-payment and dishonor, protest, and notice of protest, waive trial by jury in any action or proceeding arising on, out of, under or by reason of this note, consent to any renewals, extensions and partial payments of this note or the indebtedness for which it is given without notice to them, and consent that no such renewals, extensions or partial payments shall discharge any party hereon from liability hereon in whole or in part. If a petition under any provision of the Bankruptcy Act or any other insolvency statute for any relief thereunder shall be filed by or against any maker, endorser or guarantor hereof, then this note and all other existing obligations of every kind of each maker or endorser hereof to the holder hereof shall become immediately due and payable. If this note be not paid when due and if it be placed with an attorney for collection, the maker, makers, endorsers and guarantors agree to pay all costs of collection, including an attorney's fee of 20% of the amount of this note, which is hereby agreed to be just and reasonable and which shall be added to the amount due under this note and recoverable with the amount due under this note. If any endorser or guarantor of this note shall pay the amount of the same to the holder thereof at maturity and thereafter shall place the same with an attorney for collection against the maker, makers, prior endorsers, guarantors or any of them, then they agree to pay to said endorser or guarantor all costs of collection, including an attorney's fee of 20%; which is hereby agreed to be just and reasonable and which shall be added to the amount due under this note and recoverable with the amount on this note. Interest on this note after maturity shall be due and payable at the rate of two per cent per month.

Value Received with interest at 6% 7%

Devco Management Inc.

Alfred J. Fisher

Due June 30, 1972

Chief Executive Officer

The undersigned endorsers have examined, are familiar with and hereby jointly and severally agree to be bound by all the terms and conditions of the within note and that the time for the payment of said note or indebtedness for which it was given may be extended, partially repaid and partially or fully extended without notice or assent by the undersigned or any of them and without affecting the liability of the undersigned or any of them, and the undersigned waive presentment for payment, demand, notice of dishonor, protest and notice thereof, and trial by jury in any action on this note.

NAME

BUS. ADDRESS

HOME ADDRESS

NAME

BUS. ADDRESS

HOME ADDRESS

NAME

BUS. ADDRESS

HOME ADDRESS

The undersigned endorsers have examined, are familiar with and hereby jointly and severally agree to be bound by all the terms and conditions of the within note and that the time for the payment of said note or indebtedness for which it was given may be extended, partially repaid and partially or fully extended without notice or assent by the undersigned or any of them and without affecting the liability of the undersigned or any of them, and the undersigned waive presentment for payment, demand, notice of dishonor, protest and notice thereof, and trial by jury in any action on this note.

NAME

BUS. ADDRESS

HOME ADDRESS

NAME

BUS. ADDRESS

HOME ADDRESS

NAME

BUS. ADDRESS

HOME ADDRESS

\$12,500.00

April 26, 1972

Eighty-five days

after date we promise to pay to

the order of Mori Sinoto

Twelve thousand five hundred and no/100

Dollars

Payable at Franklin National Bank 15 Columbus Circle, New York, NY 10023

This is note No. 3 of a series of 4 notes. Upon default in the payment of any one of these notes or any other note or notes of the maker and/or endorsers and/or guarantors hereof, held or acquired by holder hereof all of the aforesaid notes shall immediately become due and payable without prior notice or demand.

The makers, endorsers and guarantors of this note hereby waive presentment for payment, demand, notice of non-payment and dishonor, protest, and notice of protest, waive trial by jury in any action or proceeding arising on, out of, under or by reason of this note, consent to any renewals, extensions and partial payments of this note or the indebtedness for which it is given without notice to them, and consent that no such renewals, extensions or partial payments shall discharge any party hereof from liability hereon in whole or in part. If a petition under any provision of the Bankruptcy Act or any other insolvency statute for any relief thereunder shall be filed by or against any maker, endorser or guarantor hereof, then this note and all other existing obligations of every kind of each maker or endorser hereof to the holder hereof shall become immediately due and payable. If this note be not paid when due and if it be placed with an attorney for collection, the maker, makers, endorsers and guarantors agree to pay all costs of collection, including an attorney's fee of 20% of the amount of this note, which is hereby agreed to be just and reasonable and which shall be added to the amount due under this note and recoverable with the amount due under this note. If any endorser or guarantor of this note shall pay the amount of the same to the holder thereof at maturity, and thereafter shall place the same with an attorney for collection against the maker, makers, prior endorsers, guarantors or any of them, then they agree to pay to said endorser or guarantor all costs of collection, including an attorney's fee of 20%; which is hereby agreed to be just and reasonable and which shall be added to the amount due under this note and recoverable with the amount on this note. Interest on this note after maturity shall be due and payable at the rate of two per cent per month.

Value Received with interest at 8% 7%

Devco Management Inc.

[Signature]

Chief Executive Officer

Due July 20, 1972

\$12,500.00

April 26, 1972

One hundred five days

after date we promise to pay to

the order of Mori Sinoto

Twelve thousand five hundred and no/100

Dollars

Payable at Franklin National Bank 15 Columbus Circle, New York, NY 10023

This is note No. 4 of a series of 4 notes. Upon default in the payment of any one of these notes or any other note or notes of the maker and/or endorsers and/or guarantors hereof, held or acquired by holder hereof all of the aforesaid notes shall immediately become due and payable without prior notice or demand.

The makers, endorsers and guarantors of this note hereby waive presentment for payment, demand, notice of non-payment and dishonor, protest, and notice of protest, waive trial by jury in any action or proceeding arising on, out of, under or by reason of this note, consent to any renewals, extensions and partial payments of this note or the indebtedness for which it is given without notice to them, and consent that no such renewals, extensions or partial payments shall discharge any party hereof from liability hereon in whole or in part. If a petition under any provision of the Bankruptcy Act or any other insolvency statute for any relief thereunder shall be filed by or against any maker, endorser or guarantor hereof, then this note and all other existing obligations of every kind of each maker or endorser hereof to the holder hereof shall become immediately due and payable. If this note be not paid when due and if it be placed with an attorney for collection, the maker, makers, endorsers and guarantors agree to pay all costs of collection, including an attorney's fee of 20% of the amount of this note, which is hereby agreed to be just and reasonable and which shall be added to the amount due under this note and recoverable with the amount due under this note. If any endorser or guarantor of this note shall pay the amount of the same to the holder thereof at maturity, and thereafter shall place the same with an attorney for collection against the maker, makers, prior endorsers, guarantors or any of them, then they agree to pay to said endorser or guarantor all costs of collection, including an attorney's fee of 20%; which is hereby agreed to be just and reasonable and which shall be added to the amount due under this note and recoverable with the amount on this note. Interest on this note after maturity shall be due and payable at the rate of two per cent per month.

Value Received with interest at 8% 7%

Devco Management Inc.

[Signature]

Chief Executive Officer

Due August 9, 1972

The undersigned endorser have examined, are familiar with and hereby jointly and severally agree to be bound by all the terms and conditions of the within note and that the time for the payment of said note or indebtedness for which it was given may be extended, partially repaid and partially or fully extended without notice or assent by the undersigned or any of them and without affecting the liability of the undersigned or any of them, and the undersigned waive presentment for payment, demand, notice of dishonor, protest and notice thereof, and trial by jury in any action on this note.

NAME

BUS. ADDRESS

HOME ADDRESS

NAME

BUS. ADDRESS

HOME ADDRESS

NAME

BUS. ADDRESS

HOME ADDRESS

9a
The undersigned endorser have examined, are familiar with and hereby jointly and severally agree to be bound by all the terms and conditions of the within note and that the time for the payment of said note or indebtedness for which it was given may be extended, partially repaid and partially or fully extended without notice or assent by the undersigned or any of them and without affecting the liability of the undersigned or any of them, and the undersigned waive presentment for payment, demand, notice of dishonor, protest and notice thereof, and trial by jury in any action on this note.

NAME

BUS. ADDRESS

HOME ADDRESS

NAME

BUS. ADDRESS

HOME ADDRESS

NAME

BUS. ADDRESS

HOME ADDRESS

ANSWER

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X

NORI SINOTO,

73 Civ. 25

Plaintiff,

-against-

ANSWER

DEVCO MANAGEMENT, INC., and
DEIGHTON O. EDWARDS, JR.,

Defendant.

----- X

Defendants, Devco Management, Inc. and
Deighton O. Edwards, Jr., by their attorney, Marvin
I. Edelstein, answering the complaint of the plaintiff
respectfully alleges as follows:

1. Deny any information sufficient to form
a belief thereof, the allegation contained in paragraph
"1" of the complaint relative to the citizenship of the
plaintiff.

2. Deny the allegations contained in paragraph
4 of the complaint.

FOR A FIRST AFFIRMATIVE DEFENSE

3. This court does not have proper jurisdiction
over the parties herein.

FOR A SECOND AFFIRMATIVE DEFENSE

4. The notes forming the cause of action herein were procured by fraud and wilful misrepresentation by the plaintiff to the defendants.

FOR A THIRD AFFIRMATIVE DEFENSE

5. The notes herein were given without consideration and are null and void.

FOR A SET-OFF

6. The notes set forth in the complaint herein were executed and guaranteed and issued to the plaintiff solely as a demand loan to the extent that there is presently due and owing the defendants, jointly and individually, the sum of \$50,000.00, together with interest at 7% from the date of said loan.

5/ Marvin I. Edelstein
MARVIN I. EDELSTEIN
Attorney for Defendants
Office & P. O. Address
55 Liberty Street
New York, New York 10005
732-9656

TO: BUTOWSKY, SCHWENKE & DEVINE, ESQS.
Attorneys for Plaintiff
230 Park Avenue
New York, New York 10017
725-5360
Att.: Michael C. Devine, Esq.

PRE-TRIAL ORDER WITH CONSENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
NORI SINOTO, :

Plaintiff, :

-against- :

DEVCO MANAGEMENT, INC. and :
DEIGHTON O. EDWARDS, JR., :

Defendants. :
----- x

73 Civ. 25 WK

PROPOSED PRE-
TRIAL ORDER

On October 23, 1973, the attorneys for the parties to this action appeared before the Court at a pre-trial conference pursuant to Rule 16 of the Federal Rules of Civil Procedure, and the following action was taken.

1. The pleadings were agreed to be deemed amended in accordance with the framing of the issues in this action in paragraph 9 of this pre-trial order.

2. The parties agreed that the trial of this action should be based upon this order and upon the pleadings as amended except that the following issues raised by the pleadings are expressly abandoned:

(a) Defendants' First Affirmative Defense (lack of jurisdiction).

3(a). The parties stipulated that the following facts are not in dispute in this action (each party reserving the right to object to the materiality of any such stipulated fact and its relevancy to the issues):

(1) Plaintiff is a citizen of Japan.

(2) Devco Management, Inc. ("Devco") is a corporation incorporated under the law of the State of Delaware, and it is a citizen of the State of New York.

(3) Deighton O. Edwards, Jr. ("Edwards") is a citizen of the State of New York.

(4) The amount in controversy, exclusive of interests and costs, exceeds \$10,000.

(5) Edwards' authentic signature appears on the front of the four promissory notes which are plaintiff's exhibits 1, 2, 3, and 4.

(6) On or about May 2, 1972, Edwards endorsed on the back of the four promissory notes which are plaintiff's exhibits 1, 2, 3, and 4.

(7) Edwards' authentic signature appears on the letter dated April 26, 1972, which is plaintiff's exhibit 5.

(8) On September 13, 1972, the four promissory notes which are plaintiff's exhibits 1, 2, 3 and 4 were presented by plaintiff, through bank channels, to Devco's bank, in accordance with the terms of the notes.

(9) On September 13, 1972, Devco's bank refused to pay the promissory notes and formally dishonored them.

(10) On or about September 18, 1972, plaintiff again demanded of both defendants that they pay the promissory notes, but both refused.

(11) There has been no payment of any part of any of the promissory notes.

(12) Plaintiff never has received any compensation (or other consideration) for any services which may have been rendered by him for the benefit of Devco.

3(b). It is the plaintiff's contention that:

(1) Defendants are jointly and severally liable to him in the principal amount of the four promissory notes which are plaintiff's exhibits 1, 2, 3, and 4, plus interest, plus attorneys fees, plus the costs and disbursements of this action

(2) The amounts of plaintiff's damages are as follows

(i) \$50,000.00; total principal amount; plus

(ii) \$16,380.04; interest to October 31, 1973 (plus interest to date of judgment); plus

(iii) \$10,000.00; specified attorneys' fee.

3(c). It is defendants' contention:

(1) That the notes executed by the defendant, Devco, and guaranteed by the defendant, Edwards, were procured by fraud and misrepresentation on the part of the plaintiff, in that it was expressly understood that the said notes were not to be negotiated nor presented for payment and that the same were executed by the defendants in blank at the insistence of the plaintiff.

(2) Notwithstanding the fraud and misrepresentation as set forth above, it is the further contention of the defendant that the notes were issued without consideration in that the plaintiff had performed no services for or on behalf of either defendant.

4. The exhibits which each party now expects to offer at the trial are as listed below. The parties agree that the documents marked with an asterisk are authentic and may be offered in evidence.

(a). To be offered by plaintiff:

- * (1). Promissory note; dated April 26, 1972, due June 12, 1972, on which Devco Management, Inc. is the maker and Nori Sinoto is the payee;
- * (2). Promissory note, like #1, except due June 30, 1972;
- * (3). Promissory note, like #1, except due July 20, 1972;
- * (4). Promissory note, like #1, except due August 9, 1972.
- * (5). Letter of Devco Management, Inc. to Nori Sinoto, April 26, 1972 (signed copy of same letter is marked "5A", with financial statement attached).
- * (6). Letter of Nori Sinoto to Devco Management, Inc. and Deighton O. Edwards, Jr., September 18, 1972;
- * (7). Notice of Protest and Certificate of Protest; regarding note #1 (to be marked as one exhibit
- * (8). Same items as in #7, except regarding note #2;
- * (9). Same items as in #7, except regarding note #3;
- * (10). Same items as in #7, except regarding note #4;

- (11). Diary of Nori Sinoto for 1971;
 - (12). Diary of Nori Sinoto for 1972;
 - (13). Part 1 of a Report entitled "Devco Management Inc. - Proposal for a Major, National Minority Enterprise";
 - (14). Part 2 Appendix of the Report referred to in item 13;
 - (15). Diary of Deighton O. Edwards, Jr. for 1972;
- (b). To be offered by defendants:
- * (A). Certificate of Incorporation of Devco Management, Inc.;
 - * (B). Minutes of meetings of board of directors of Devco Management, Inc.;
 - * (C). General Ledger of Devco Management, Inc.;
 - * (D). Stock transfer ledger of Devco Management, Inc.
 - (E). Minutes of meetings of shareholders and board of directors of Aroco Services, Inc.;
 - (F). Stock transfer ledger of Aroco Services, Inc.
 - (G). Letter agreement between Burnett International Inc. and Nori Sinoto (to be subpoenaed by defendants).

5. The parties agree that the witnesses whom each party now intends to call, along with the specialty of experts to be called, are those listed below. Should any party hereafter decide to call any additional witnesses, prompt notice of their identity shall be given to each other party in writing, setting forth the reason why the witness was not theretofore identified. No witness may be called at trial unless identified as above.

(a). To be called by plaintiff:

- (1) plaintiff;
- (2) Joseph P. McNally;
(rebuttal)
- (3) Carmen Corrado.
(rebuttal)

(b). To be called by defendants:

- (1) Deighton O. Edwards, Jr.;
- (2) Walter Winfree;
- (3) James Savage;
- (4) Paul L. Moore;
- (5) Winston Burnette.

6. The parties agreed to limit the number of expert witnesses as follows:

(a). Plaintiff agrees to call no more than one expert witness on the issue of the chronology of completion of the promissory notes;

(b). defendants agree to call no expert witnesses.

7. The items specified in Paragraph 3(b)(2) above are all of the claims for damages or for other relief asserted by the plaintiff in this action, as of the date of this conference.

8. The parties also agreed on the following matters

(a) Plaintiff at this time expects to require one trial day (including potential rebuttal witnesses); defendants at this time expect to require one trial day.

9. The issues to be tried are formulated by the Court (with the consent and agreement of the parties) as follow:

(1) Did the plaintiff procure the four promissory notes which are plaintiff's exhibits 1, 2, 3, and 4 by fraud upon the defendants; and

(2) If lack of consideration constitutes a defense to plaintiff's claim, were the promissory notes issued without valid consideration.

Dated: New York, N. Y.
October 23, 1973.

SO ORDERED:

/s/ Whitman Knapp

Hon. Whitman Knapp
U.S.D.J.

CONSENTED TO:

BUTOWSKY, SCHWENKE & DEVINE

By *Michael C. Devine*

A member of the firm
Attorneys for Plaintiff

Marvin I. Edelstein

MARVIN I. EDELSTEIN, ESQ.
Attorney for Defendants

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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

----- x

NORI SINOTO, :

Plaintiff, :

-against- : 73 Civ. 25

DEVCO MANAGEMENT, INC., and :

DEIGHTON O. EDWARDS, JR., :

Defendants.

----- x

Before:

HON. WHITMAN KNAPP,

District Judge

New York, March 11, 1974

Room 1105 - 10:00 a.m.

APPEARANCES:

MICHAEL C. DEVINE, Esq.,
Attorney for Plaintiff

and

MS. BARBARA EDMONDSON, Esq., of Counsel

MARVIN EDELSTEIN, Esq.,
Attorney for Defendants

- - -

2 (Case called.)

3 THE COURT: I take it the plaintiff just offers
4 the note and then the defendant proceeds with his defense,
5 is that right?

6 MR. DEVINE: Your Honor, I need to preface that
7 with a couple of comments.

8 One, we do have some stipulated facts which I would
9 like to offer and some stipulated documents also which I
10 would like to offer.

11 We in addition have an expert witness who is on
12 call and I expect him any minute. I would put him on as
13 part of the plaintiff's case, so that he will not have to
14 sit and wait through the defendants' case.

15 THE COURT: He technically would be in rebuttal.

16 MR. DEVINE: Yes, but I know there is an issue,
17 and I will offer it. I would also offer Mr. Sinoto, the
18 plaintiff, for a very short series of questions, and then
19 rest.

20 THE COURT: Does the defendant have any comment
21 it wants to make?

22 MR. EDELSTEIN: No, except I don't see anything
23 in the pretrial order relative to an expert.

24 THE COURT: There is an expert listed there.

25 MR. EDELSTEIN: There are three people listed.

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2 MR. DEVINE: There is also a specific section
3 on experts, where he is identified.

4 MR. EDELSTEIN: I have no objection, in any
5 event.

6 MR. DEVINE: Your Honor, the question of docu-
7 ments I guess is what I should take up first. We have
8 premarked the first ten exhibits and they are listed in
9 the pretrial order as Plaintiff's Exhibits 1 through 10.
10 And there are stipulations as to all of those documents,
11 that they are authentic and admissible.

12 THE COURT: What does the asterisk mean on the
13 stipulation?

14 MR. DEVINE: That means there are no objections
15 and they can come into evidence. I would like to offer at
16 this time all of those ten exhibits, and I will give them
17 to the clerk.

18 I think I have them in order -- yes, I do.
19 I have Exhibits 1 through 10 in order.

20 We have marked these with cards. They are not
21 the court's normal marking tickets, but I think that they
22 may suffice.

23 THE COURT: I suppose it is all right.

24 (Pause.)

25 THE COURT: Yes, it is all right.

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2 They don't need to be replaced. Those will be
3 received in evidence Plaintiff's Exhibits 1 through 10.

4 No objection, I assume.

5 MR. EDELSTEIN: Subject to testimony relative
6 to the validity of the documents, of course.

7 THE COURT: Yes.

8 (Plaintiff's Exhibits 1 through 10 were received
9 in evidence.)

10 MR. DEVINE: In addition, your Honor, we have a
11 stipulated set of facts in the pretrial order. They are in
12 Item 3-A in parentheses in the pretrial order, and
13 No. 1 through 12. I would ask that those facts at this
14 time be made part of the record. I'd be happy to
15 read them in if that is the best way to do it.

16 THE COURT: That is the entire paragraph 3-A?

17 MR. DEVINE: Yes, it is.

18 THE COURT: No, that can be deemed part of the
19 record. It doesn't have to be read.

20 MR. DEVINE: I would call Joseph McNally as the
21 first witness for the plaintiff.

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1 elbr McNally-direct 5
2 J O S E P H P. M c N A L L Y, called as a witness
3 by the plaintiff, being first duly sworn, testified
4 as follows:

5 DIRECT EXAMINATION

6 BY MR. DEVINE:

7 Q Mr. McNally, what is your occupation?

8 A I am an examiner of questioned documents, that
9 is, more commonly known as a handwriting expert.

10 Q Will you state for the Court very briefly your
11 background in this field.

12 A I have been involved in this particular discipline
13 and forensic science since 1942. In 1942 I started off in
14 this particular area in the New York City Police Department,
15 when I was assigned to the Document Section of the New York
16 City Police Department Laboratory.

17 I remained in this particular type of work,
18 document identification, during practically all my time in
19 the Police Department from 1942 until 1972 when I returned with
20 the rank of captain from the New York City Police Department.
21

22 THE COURT: Did I ever come in contact with you
23 between '42 and '50 when I was in the DA's office?

24 THE WITNESS: You may have, sir. There were so
25 many assistants I passed back and forth through.

23a

From 1972 until the present I have been in private practice as an examiner of questioned documents. I have also been retained as a consultant by the New York City Department of Social Services in the field of handwriting identification. I have been involved in many thousands of cases in which document identification played a part; and as a result of my involvement and my findings in these cases I have been called upon to testify as a document examiner or a document identification expert.

I have testified and have been accepted as qualified in more than a thousand incidents in the grand juries of the various counties of the State of New York and other counties in the metropolitan area, federal grand juries, the many courts of the State of New York, also courts in the States of New Jersey, Connecticut, Rhode Island.

I have also testified and been accepted as qualified in the field of document identification in the federal court system.

THE COURT: Here in this district?

THE WITNESS: In Southern, Eastern and in Northern Districts.

I am a member of several professional societies which deal with this particular forensic discipline. A member of the American Society of Forensic Sciences.

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A member of the American Society of Questioned Document
Examiners, member of the International Association for
Identification, and a member of the American Society for Test
ing and Materials.

THE COURT: Do you challenge his qualifications?

MR. EDELSTEIN: No, your Honor. I just don't
know what the purpose of an expert witness is.

THE COURT: As I recollect from the pretrial
order, there is some question as to whether these documents
were given complete or blank.

MR. EDELSTEIN: Yes, that is an issue.
If that is what he is going to testify to, I have no
objection.

THE COURT: Is that what he is here for?

MR. DEVINE: Yes, your Honor.

Q Mr. McNally, I show you Plaintiff's Exhibits
1 through 4 which have been received in evidence in this
case and I ask whether you have prior to today examined
those documents.

A I have.

Q Would you describe briefly for the Court the
nature of the examination which you made of those docu-
ments?

A I examined the area particularly in the lower

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1 elbr McNally-direct 8
2 right-hand corner where the typewriting Devco, D-e-v-c-o,
3 Management, Inc. and the words Chief Executive Officer
4 appear. That particular typewriting appears on all four
5 of these documents. In the area in between Devco --
6 THE COURT: May I see one of those documents.
7 I take it they are all similar.
8 THE WITNESS: Yes, sir.
9 THE COURT: I am looking at Exhibit 1.
10 A In between the typewriting Devco Management
11 which is on one line and Chief Executive Officer, which is
12 about three-quarters of an inch below and slightly to the
13 right, appears the script signature Deighton O. Edwards.
14 I examined this, using a low power binocular microscope to
15 determine actually the sequence of writing here, whether the
16 typewriting came first or whether the script signature
17 Deighton O. Edwards was there and the typewriting is
18 superimposed upon it.
19 As a result of my examination and comparison,
20 using the low power binocular microscope I concluded that
21 the writing is in normal sequence, in effect that the
22 typewriting Devco Management, Incorporated and Chief
23 Executive Officer, appeared first and that subsequently the
24 Deighton O. Edwards signature was written, and in areas
25 where the signature or the script writing imposes upon the

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typewriting, these script signatures have been written over
the typewriting.

Q Can you state that opinion with reasonable cer-
tainty?

A I can.

Q I show you also Plaintiff's Exhibit 5 which has
been marked in evidence in this case, and I ask with respect
to that document whether prior to today you have made an
examination of it.

A I have.

Q Could you state briefly for the Court the nature
of your examination of that document?

A Again, the same type of examination was con-
ducted. The area at the lower right where the typewriting
Very Truly Yours, and the typewriting Deighton O.
Edwards, Jr., Chief Executive Office now appears, in
between these segments of typewriting appears the script
signature of Edwards.

An examination of this area using a low powered
binocular microscope, upon an examination of this area
I determined that the script signature of Edwards was written
after the typewriting. In effect, the typewriting first
and then the signature of Edwards imposed upon the type-
writing.

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Q Can you state that opinion with reasonable certainty?

A I can.

MR. DEVINE: I have no further questions, your Honor.

THE COURT: Have you opinion whether the rest of the typing on this note was on the same typewriter as Devco Management?

THE WITNESS: Yes. As a collateral, I also examined the typewriting on all four notes and the typewriting on Plaintiff's Exhibit 5.

In each instance the typewriting has been done on the same machine. It is a foreign typeface or a foreign manufactured typeface, manufactured by an organization, Ransmayer Rodrian in West Berlin, West Germany.

This particular typeface is used on a number of machines, one being a domestic machine, a Remington. And there are a number of machines, a Hermes, a Fossett, and a couple of other machines.

THE COURT: In your opinion, this was all done on the same typewriter?

THE WITNESS: That is right.

THE COURT: I suppose you have no opinion as to whether it was all done at the same time?

1 THE WITNESS: Not insofar as the promissory
2 notes are concerned. However, insofar as Plaintiff's
3 Exhibit 5 is concerned, that entire letter was written in
4 sequence. In other words, the letter was written without
5 being removed from the typewriter.
6

7 THE COURT: But you haven't got the same opinion
8 as to the promissory notes?

9 THE WITNESS: I did not examine the promissory
10 notes from that standpoint, your Honor.

11 MR. EDELSTEIN: You have asked my questions,
12 your Honor. I have no questions.

13 MR. DEVINE: No redirect, your Honor.

14 Thank you, Mr. McNally.

15 (Witness excused.)

16 THE COURT: Would it be possible to determine that
17 if it became an issue, whether they were written at the
18 same time?

19 MR. MC NALLY: I believe it would be, sir.

20 MR. DEVINE: I call Nori Sinoto.
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N O R I S I N O T O, the plaintiff herein, called
as a witness in his own behalf, having been first
duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. DEVINE:

Q Mr. Sinoto, I show you the documents which are
marked Plaintiff's Exhibit 1 through 4, the promissory
notes, and ask whether you were present when those notes
were signed.

A Yes.

Q Was the typewritten material on those four notes
on those notes prior to their being signed?

A Yes.

Q I show you Plaintiff's Exhibit 5 also, and
ask you whether you were present when that document was
signed.

A Yes.

Q Was the typewritten portion of that document on the
page prior to the document being signed?

A Yes.

Q Mr. Sinoto, what is your business, very briefly?

A My business is advisory services and business
coordination.

Q Are you the plaintiff in this case?

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2 A Yes.

3 Q Did there come a time when you met the defendant
4 Deighton Edwards?

5 A The beginning of October, 1971 I met with Mr.
6 Edwards at his office.

7 MR.EDELSTEIN: Your Honor, I am going to object to
8 any testimony prior to the inception of Devco Management
9 Corporation. This corporation was founded and chartered
10 in the State of Delaware on March 16, 1972. Devco is the
11 maker of the note. Edwards is merely a guarantor. He is not
12 a co-maker of the notes. Therefore, I respectfully submit
13 that any evidence or any testimony that may come out pre-
14 dating the date of the formalization of the defendant Devco,
15 is irrelevant and inadmissible, your Honor.

16 THE COURT: Might it not be material to know the
17 background of the relationship between the parties?

18 MR. EDELSTEIN: No, because I think it might
19 unduly prejudice my client. I think we are here only to
20 determine the validity or the invalidity of a series of
21 notes. And what happened prior to the inception of the
22 date of the maker, is somewhat irrelevant.

23 THE COURT: You claim, as I understand it, is that
24 these notes are in a sense a forgery.

25 MR. EDELSTEIN: No; primarily it is our contention

2 tha they were given without valid consideration, your
3 Honor.

4 THE COURT: I remember seeing somewhere in the
5 pretrial order that you claim the body of the note was written
6 at some subsequent time.

7 MR. EDELSTEIN: Yes, it was one of the claims.

8 THE COURT: That sounds very much like a forgery
9 claim.

10 MR. EDELSTEIN: Basically, our claim is that the
11 notes were given without any consideration.

12 THE COURT: Is this part of your claim?

13 MR. EDELSTEIN: Yes, sir.

14 THE COURT: Certainly the background of the
15 parties would be interesting on that issue.

16 MR. EDELSTEIN: I object to any issue prior to
17 March 17, 1972, your Honor.

18 THE COURT: Overruled.

19 Q After you met Mr. Edwards, did you and Mr. Edwards
20 engage in any business project of any kind?

21 A Yes, I have been involved. I was involved in
22 many projects.

23 Q Can you state briefly what kind of project you
24 and Mr. Edwards were involved in?

25 A Immediately after I was introduced to Mr. Edwards

THE COURT: What was the date of your introduction?

THE WITNESS: The beginning of October, 1971.

By Mr. Winfree to Mr. Edwards, he immediately began to discuss with me possible development of his own business.

And I was involved in the discussion^s in the development of certain business and projects for Barnett Development International Corporation, Local Services, Inc., Bahamas World Airlines, and a few other organization^{at} development^s; including Devco Investment, Inc., as well as Devco Management, Inc. In other words, my sincere wishes since the

beginning of my meeting with Mr. Edwards until today, even today, my sincere wishes since the beginning of my meeting with Mr. Edwards ^{has been} ~~is~~ to assist him personally, no matter what kind of business he ^{would} ~~will~~ be involved, he ^{would} ~~will~~ develop then and in the future. And all the time I have been praying for his success.

THE COURT: You have been doing what?

THE WITNESS: Praying for his success. And I hope that he will be very successful in the particular project which he strongly encouraged him to develop, namely major industry for minority groups in the area of Waste Management ~~Project~~.

Q Did there come a time, Mr. Sinoto, when the concept of Devco, whether it be Devco Development or Devco

1 Management, came about.

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3 MR. EDELSTEIN: I object to that again, your
4 Honor. There has been no Devco Development mentioned in any
5 of the pleadings herein. We don't know anything about such
6 a company. All we know about is again Devco Management,
7 the defendant in this suit.

8 THE COURT: I don't see that it's prejudicial.
9 We can find out what relevance it has after we get it
10 all in.

11 Q I will withdraw the question and reframe it.
12 Did there come a time when an entity known as Devco became
13 known to you?

14 A Later part of 1971 Mr. Edwards mentioned Devco
15 Investment, Inc. name. And subsequently, some time in
16 January, 1972, I even referred to that name, Devco Invest-
17 ment, in my letter addressed to Mr. Lincoln.

18 Q Did there come a time when a Devco Management
19 became known to you?

20 A Yes, subsequent to my discussion with Mr. Edwards
21 in January some time --

22 Q January of what year?

23 A Excuse me. January, 1972, he introduced me to the
24 new name Devco Management, Inc..

25 Q With respect to Devco Management did you have

discussions with Mr. Edwards regarding the nature of the proposed business of that entity?

A Generally speaking, all the discussions were centered around possible development and establishment of major industry for minority groups. However, when we began to talk about development of Devco Management, particular project already came into our discussion which was Waste Management Project.

Q Who conceived the idea of Devco Management going into Waste Management Industry?

A Since the beginning, again, my discussion with Mr. Edwards around the beginning of October, 1971, I have been emphasizing the importance to establish a ^{major} ~~fine~~ project for minority groups, and in the beginning I was naturally trying to explore various projects, such as ~~building~~ ^{industrial} ~~business~~ and manufacturing for various ~~groups~~. As a result of my initial stages of exploration for the possible establishment of major minority industry in the United States, I came across the concept or philosophy to develop Waste Management Project in behalf of minority groups in the United States as a major industry.

Q Were meetings held in your office with Mr. Edwards and others regarding the formation and development of Devco Management?

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2 A Since the beginning, again, of my discussions
3 with Mr. Edwards, my advise has been directed towards
4 Mr. Edwards ~~almost~~ personally, and I didn't almost care
5 what kind ^{of} name he is putting on the project. And there-
6 fore I didn't even know that the sudden exchange from Devco
7 Investment to Devco Management because I wasn't consulted.
8 However, again, I wasn't so concerned about the name of the
9 corporation because my sincere approach to this entire
10 project is to assist Mr. Edwards personally, and that at-
11 titude and my sincere thinking never changed. Even at this
12 moment I still hope that Mr. Edwards will be successful with
13 that project.

14 Q You answered a question other than the question
15 which I asked you. I would like to ask you again my
16 previous question, which is, were meetings held in our of-
17 fice?

18 A Yes. Quite often the meeting^s between Mr. Edwards
19 and myself and a few other associates of Mr. Edwards ^{were} was
20 held in my office.

21 Q Was it your practice to keep a record, a diary
22 record during 1971 and 1972 of your business activities?

23 A Yes. It was my practice to keep a rather meticu-
24 lous record of my meetings and telephone calls and receipt
25 of mail and also a record of outgoing mail, in my diary.

Not only my diary, but also my secretary's diary showed complete records of those meetings.

Q Have you ever received any salary or compensation of any ^{kind} from Devco Management?

A When I was introduced to Barnett International Corporation Mr. Edwards gave me a note saying that I ^{be} properly compensated by Barnett International. At the end of 1971 he requested me to supply with ^{an} invoice for my work as well as ^{an} invoice for the disbursement of expenses. I have done so by personally delivering two documents to Mr. Edwards and I received a word from Mr. Edwards that he will personally take care ^{of} or responsibility for the payment of these items and also he indicated to me that since my association with Mr. Edwards is really a personal one and he wanted to make sure that when he brings in the people he will take care from his -- what shall I say -- share of the business, and if I bring ⁱⁿ the people I would take care from my share of the business which since the beginning was a 50/50 type arrangement. However, two invoices that I delivered to Mr. -- actually Barnett International through Mr. Edwards, were never paid. I haven't received a penny.

Also I haven't received any compensation promised by Mr. Edwards, not only for the work I have provided, but

also expenses.

Q Mr. Sinoto, we should straighten out the distinction between Barnett International which you have referred to and Devco Management. During that period of time were you concerned with Barnett International?

MR. EDELSTEIN: Your Honor, I am going to object again to Barnett International. This is a completely alien corporation to the purpose of our being here today. There's been no tie-in between that and the defendant in this case.

THE COURT: I am aware of that and I assume you will argue that when all the evidence is in. But I don't see that it does any harm.

Q When was it, Mr. Sinoto, that you were involved with Barnett International? Just the name?

A Since the end of September, 1971 to the beginning of January, 1972.

Q When was the time period during which you were involved with Devco Management?

A Devco Management is a concept, as far as I am concerned, and as far as Mr. Edwards considers that is the concept to be developed as a project to develop major industry for minority group, as far as I was concerned it was the same thing as Devco, you say Devco Indemnity or any other

2 name.

3 MR. EDELSTEIN: I object to that, your honor.

4 It is not responsive.

5 THE COURT: It tells us what he was concerned
6 about.

7 Q When did the concept become known as Devco Manage-
8 ment?

9 A Right after my first meeting with Mr. Edwards,
10 around the beginning of October, 1971, Mr. Edwards began to
11 talk about his concept of organizing his own company.
12 Sometimes he used different names, such as Aroco Services.
13 Sometimes he said Sinoto/Edwards, to indicate 50/50 partner-
14 ship. All of which I have a record.

15 Q When did it come to be called Devco?

16 A In the latter part of 1971 he mentioned
17 Devco Investment's name. Therefore I immediately used
18 Devco in my letter to Mr. Franklin Lincoln.

19 Q Did it come to be called Devco Management?

20 A Though I don't recall precisely when it was
21 changed suddenly to Devco Management, but I assume in the
22 month of February, 1972.

23 Q Focusing just on Devco Management, the corporation,
24 have you ever received any salary or compensation from that
25 company?

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A No.

MR. DEVINE: I have no further questions, your Honor.

THE COURT: I am puzzled. What was the significance of the expert's testimony?

MR. DEVINE: That the typewriting on the notes appeared on the notes prior to the handwriting.

THE COURT: Just on the signature. What is the significance of that when he can't say whether the body of the note was done before or at the same time?

MR. DEVINE: I think it is some evidence, your Honor.

THE COURT: He said he could have told you whether the body was on it at the same time, but he didn't. Why didn't he?

MR. DEVINE: I think it was because we didn't ask him to do that.

THE COURT: Why didn't you ask him whether the body of the letter was typed at the same time as the signature? Would you please ask him to come back and tell me whether the body of that note was done at the same time as the typing?

MR. DEVINE: Yes, we will.

THE COURT: Because it seems to me that the

to be much.

Q When the notes were signed on April 26th in the sum of \$50,000, was that for all the work you had done to date, was that for work you had expected to do in the future, or what was it?

A It was for my work up to that point. However, it was as a partial, as I mentioned before, partial compensation, as I mentioned before.

Q That was a partial compensation?

A Yes.

Q On april 26, 27, do you know if Devco maintained an office?

A April 26, 1972?

Q Yes, the date they signed the note?

A I understand he had an office, Devoco also had an office.

Q Do you know where?

A I think it was at 15 Columbus Circle.

Q Prior thereto they had also used your space, is that correct?

A Not necessarily. From time to time he came to my office and used my office for meetings.

Q Do you know if they had any employees?

A Yes, I have one secretary.

Q Not you, Devco Management I am referring to.

A I am sorry.

Q At the time you signed that?

A I understand he had a few people.

Q On or about April 26th^{ly} what other clients were you representing other than Devco?

A I was representing Major Japanese Computer Company at that time?

Q Who else?

A And I would have to refer to my records precisely as to which companies I was representing.

THE COURT: Do you have your records with you?

MR. DEVINE: Yes, your Honor. We have previously marked Mr. Sinoto's diary for 1971 as Plaintiff's Exhibit 11, and two volumes for 1972 as Plaintiff's Exhibit 12. They are both marked 12. You may want to distinguish between them.

THE COURT: We will mark one 12-A and one 12-B. Have they been admitted into evidence, has there been a stipulation?

MR. EDELSTEIN: There has been no stipulation. I have no objection to them all.

THE COURT: All right. They are received.

(Plaintiff's Exhibits 11 and 12-A and 12-B

1 elba
2 were received in evidence.)

3 THE WITNESS: Maroth Engineering Company,
4 and I am not so certain, but I think I was representing
5 also Fisher & Brothers.

6 THE COURT: What does Fisher & Brothers do?

7 THE WITNESS: Trucking organization.
8 MDH Products Corporation. These are the major corporations
9 that I was representing at that time. However, I was
10 discussing with ~~him~~ other corporations, But I'd like to
11 point out that based on my record and diary that almost
12 every day I have been spending time with Mr. Edwards and his
13 associates.

14 MR. EDELSTEIN: I move to strike that part out.

15 THE COURT: Yes. You answered the question.

16 Q So at the time that you were representing
17 Devco, you were representing five or six other companies?

18 A Yes, sir.

19 Q Were you representing them on a consulting fee
20 basis or on a contingent fee basis? What was your
21 relationship fee-wise with these companies?

22 MR. DEVINE: Your Honor, this is totally irrel-
23 evant. It may even be privileged since personal business
24 affairs which he may consider to be confidential..

25 THE COURT: I can see its relevance. I will al

2 low it.

3 A I am sorry.

4 MR. EDELSTEIN: Would you repeat the question,
5 please.

6 Q What was ~~your~~ fee arrangement with these companies
7 that you were representing?

8 A Mostly contingency basis.

9 Q So that you were not enjoying a regular income
10 at this time, is that correct, Mr. Sinoto?

11 A That is right.

12 Q Were you experiencing financial difficulties
13 at this time?

14 A Yes, because of my devotion to Mr. Edwards'
15 ~~product~~ ^{project} development naturally I experienced ce tain
16 difficulty in financing ~~of~~ ^{own} my development.

17 Q At this time prior to the execution of notes
18 did you have any conversation with Mr. Edwards relative to
19 your financial difficulties?

20 A Yes, I had.

21 Q What was the nature of that conversation? What
22 did he say to you and what did you say to him?

23 A I told him, briefly instead, that as he also told
24 me, that we are in need of substantial amount of money and
25 he told me that he is going to arrange cash payment possibly

1 by going to the National Bank & Trust, by presenting shares
2 of Devco Management, and therefore I said in that case I
3 don't care what kind of arrangement he is going to make,
4 because my relationship is purely between Mr. Edwards and
5 myself, so that if he uses Devco shares in order to obtain
6 the funds, I didn't have any objection whatsoever, and even
7 encouraged him to make such arrangement. Then I said of
8 course I can use that kind of income because I have been
9 devoting my time since the beginning of October, 1971.

11 Q You knew at that time that Devco had no assets,
12 isn't that correct?

13 A He told me right after the establishment of
14 Devco Management, ~~Edwards~~ he could use the shares of Devco
15 Management together with the project potential to induce
16 the funds if possible, he repeated to me at that time,
17 possibly from Nassau Bank & Trust.

18 Q So they were going to borrow from Peter to pay
19 Paul, is that your statement?

20 A I don't know what you mean --

21 MR. DEVINE: Objection.

22 THE COURT: Sustained.

23 MR. DEVINE: Your Honor, at this time could
24 I suggest that we substitute for Plaintiff's Exhibits 1
25 through 4 copy of these notes which were marked during the

2 depositions in the case so that I may have the original
3 notes delivered to Mr. McNally to follow up on your
4 suggestion.

5 THE COURT: Yes. Any objection?

6 MR. EDELSTEIN: I have never seen the original
7 notes, your Honor, if I may.

8 THE COURT: Yes.

9 MR. DEVINE: These are the copies which were
10 previously marked.

11 THE COURT: Do you have any objection to the
12 substitution?

13 MR. EDELSTEIN: No, your Honor. I just wanted
14 to see that these were indeed the notes.

15 Q As a result of your conversation with Mr. Edwards
16 on or about April 26, did he agree to assign certain
17 notes to you?

18 A Yes.

19 Q Did you discuss the amount of the notes?

20 A Yes.

21 Q Did you discuss the means of payment of the
22 notes?

23 A Yes.

24 Q Was it agreed that they were to be paid in 4
25 installments?

1
2 A Yes.

3 Q Where were the notes prepared?

4 A At my office.

5 Q By whom?

6 A My secretary.

7 Q When was the date of signing of Plaintiffs' ---

8 A April 26th.

9 Q That was the date?

10 A I recall, yes, that is the date.

11 Q At that time did Mr. Edwards affix the corpor-
12 ate seal?

13 A No.

14 Q To the notes?

15 A No.

16 Q When did he affix the seal?

17 A When he signed.

18 THE COURT: Was there a seal on the notes?

19 THE WITNESS: Yes.

20 MR. EDELSTEIN: There is a seal on the letter.

21 I don't know whether it is on the notes, really.

22 MR. DEVINE: I don't know, your Honor. The
23 letter, Plaintiff's Exhibit 5, is sealed.

24 THE COURT: I don't recollect seeing that seal
25 on the notes.

2 MR. DEVINE: I don't either, your Honor.

3 MR. EDELSTEIN: It is not important, really.

4 Q This letter, Plaintiff's Exhibit 5, was that
5 prepared in your office?

6 A Yes. After I received the dictation from Mr.
7 Edwards over the phone.

8 Q He had previously given you a blank sheet of his
9 paper, is that correct?

10 A That is right.

11 Q Had it been signed when he sent it to you?

12 A No.

13 Q When did he sign that?

14 A After we typed this letter as well as ^{four} ~~one~~ notes,
15 he signed at my office.

16 Q That was signed simultaneously with the making
17 of the notes, is that correct?

18 A Yes.

19 Q What was the purpose of this letter?

20 MR. DEVINE: The letter speaks for itself, your
21 Honor.

22 THE COURT: No. It may have a purpose.
23 The purpose may have been to make him happy, et cetera.

24 A I had been asking Mr. Edwards to give me a
25 letter indicating our verbal understanding, in writing.

1 He kept saying since the beginning of my discussion
2 with him, about the development ^{of} if his major project, namely
3 now Devco Management, he kept saying that he is going to
4 eventually give me written agreement or shares of the
5 company, or any other letter. However, I haven't
6 received anything, and I wanted to have some document
7 indicating that I am entitled for compensation.
8

9 Q You had the note itself?

10 A Yes, but I wanted to make sure that
11 there is a word. It was compensation or consideration of
12 your services rendered. I wanted to have that word in the
13 letter. And he of course agreed to include that word in the
14 letter.

15 Q So he dictated that to you over the telephone,
16 is that correct?

17 A That is right.

18 And I ^{did not} happened to find out the name of Mrs. Selma
19 Cohen unless he told me.

20 Q Who is Mrs. Selma Cohen?

21 A She was in charge of Devco at the Franklin
22 National Bank at that time.

23 Q Did you ever speak to the lady from Franklin Bank?

24 A No, I haven't.

25 Q Did you have any discussions after the signing of

these notes relative to the ability of Devco to make good on them?

MR. DEVINE: I object, your Honor. I don't understand the constant questioning of the ability of the corporation to pay these notes. I know of no defense to notes which is inability to pay.

THE COURT: No, there is no such defense, but his discussion may be relevant to the whole picture. Did you have any discussions like that?

A Yes, Mr. Edwards told me that ^{he} ~~I~~ can before ^{the} ~~this~~ date, maturing date of these notes, he was certain that he can obtain the fund from Nassau Bank & Trust Company. He indicated that he has a friend there and he was certain that he could obtain such a large sum, or rather relatively large sum of cash arrangement with that bank.

THE COURT: In other words, the company didn't have the money to pay then but he hoped it would have the money, he was certain in fact they would have the money by the time these notes came in?

THE WITNESS: Yes, sir.

Q Did Mr. Edwards ever mention to you or state to you that these notes were not to be presented to a bank?

A I had one understanding with Mr. Edwards.

No. 1 -- a couple of understandings. No. 1, that I am going to use these notes in order to obtain the loan from the bank or other financial institutions, which I have tried, it was my understanding with Mr. Edwards that in the event that I am able to obtain the loan and I ~~am~~^{will} not able to pay back that loan, naturally, that the person or company or bank who collateralized -- excuse me -- obtained my note, would naturally present to Mr. Edwards or Devco's bank. And third, that in case that he cannot give me 50 per cent of the company and proper compensation as he has been promising me all along, then naturally I have no choice but present ~~this~~^{see} note.

Q In other words, your understanding was that these notes were to be used as collateral against another loan to a third party, is that correct?

A This was requested by Mr. Edwards.

Q And that did not --

A No, because there was no funds, enough funds, and he was certain that he was able to obtain the funds before the maturity date.

He agreed with me to use as collateral.

Q Did you ever ask Mr. Edwards to obtain a loan on your behalf using some of your assets as collateral?

A Yes, I have asked him.

Q What happened after that?

A He said that he was heavily utilizing his own resources to obtain his own loan, he was unable to arrange for me at that time, personally.

Q I note that each of the notes has a different due date. One due June 12th, one June 30th, one July 20th and one August 9th. When did you present these notes for payment?

I haven't presented them — on those dates.

MR.DEVINE: There is a stipulated fact as to presentment, your Honor.

It was September 13th.

THE WITNESS: Yes.

Q Can you tell us why you didn't present them at the date due?

A All along and even now I believe in his success based on my advice, and all along I have been taking his word that he will give me 50 per cent of the company he will establish. Around June, 1972 he told me that he cannot give me that kind of shares and that he offered very, very small percentage of the shares of the company and he said, just take it or leave it.

Therefore, I believe that it was a breach of our agreement.

1
2 Then I waited long enough. During that time I
3 received a ^{for} settlement call from Mr. Edwards' group, a settl
4 ment of this matter, before I presented four notes to the bar
5 my bank.

6 THE COURT: You received a settlement?

7 MR. EDELSTEIN: Objection. I am not sure
8 if I understood what he said, but I am objecting if he is t
9 ng n terms of --

10 THE WITNESS: First of all, I objected to
11 the number of shares he was trying to give me. I had
12 told him that it was just so small and it was a breach of
13 agreement. Then Mr. Edwards said that just take it or
14 leave it, we cannot give you any more. Then I thought
15 it was a breach of our agreement, and I tried to honor
16 my verbal agreement until then.

17 THE COURT: What was your verbal agreement?

18 THE WITNESS: That he is going to give me
19 50 per cent.

20 THE COURT: You said you were trying to honor
21 your verbal agreement?

22 THE WITNESS: I tried to honor what he told me,
23 in other words, accept what he had been telling me.
24 After June, 1972 I was thinking to present these four notes
25 together with the letter immediately to my bank but I waited

long enough so that I have received some explanation from Mr. Edwards and his group. And verbally I have received certain offer of settlement, but then by the middle of September, 1972, I didn't see any ^{possibility of} ~~positive~~ or amicable settlement, so I presented my four checks to my bank.

Q Mr. Sinoto, I think you stated earlier, do you know what the purpose of Devco Management was?

A You mean the purpose --

Q Yes, you were in the initial discussions when it was being formed, isn't that correct?

A The purpose of Devco Management was to realize Mr. Edwards' dream.

Q And his dream was to create an --

A A major industry for minority group.

Q A largely owned bank company, is that correct?

A A major industry for minority group.

Q It was for a black group?

A That time naturally we ^{were} ~~are~~ talking about black people.

Q Mr. Sinoto, what was your average income over the last three years?

MR. DEVINE: Objection. Has no possible relevance.

THE COURT: I don't see how that is relevant.

MR. EDELSTEIN: I have a witness, your Honor, who, if I understand his claim correctly, is requesting compensation in the amount of \$50,000 from a corporation that was in existence six weeks.

MR. DEVINE: Your Honor, that is simply not so. We are claiming checks of notes. We are not claiming any compensation from this company.

THE COURT: That will go to the reasonableness.

MR. EDELSTEIN: That has been opened by the plaintiff in his direct examination, your Honor.

MR. DEVINE: It has not.

THE COURT: No, I don't think that adds anything to it. He has indicated he was in financial straits and needed this money, which I know is part of your defense.

MR. EDELSTEIN: No further questions of this witness, your Honor.

REDIRECT EXAMINATION

BY MR. DEVINE:

Q Mr. Sinoto, you mentioned Simitomi Shoji in your response to Mr. Edwards' questions. Will you tell the Court briefly what that company is and its size?

A ^{It is an} ~~They are~~ international trading firm based, at least ^{its} headquarters is based in Japan. And ^{it} their

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Sinoto-redirect

2 interest is so diversified that included Wasting Management
3 Project Development. This is the reason I mentioned in
4 relaying to Mr. Edwards question, that Simitomi Shoji
5 was very much interested in Devco Management Project.
6 And the size of the firm, though I don't know, they are
7 almost close to the billion dollar range.

8 Q Is it one of the three largest conglomerate compar
9 in Japan?

10 A I think it is one of possibly seven or ten major
11 Japanese concerns.

12 MR. DEVINE: That is all, your Honor.

13 THE COURT: All right. We will take a brief
14 recess.

15 (Recess.)

2 16 MR. DEVINE: Your Honor, we have delivered the
17 note back to Mr. McNally and it is my understanding from
18 my associate that he can be here the first thing tomorrow
19 morning if that is consistent with your calendar.

20 THE COURT: Yes.

21 MR. DEVINE: Subject to that testimony, the
22 plaintiff rests.

23 MR. EDELSTEIN: I guess it is premature then
24 to make any motion to dismiss.

25 THE COURT: It is never premature to make a motion.

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2 It is premature to have it granted.

3 MR. EDELSTEIN: I would like to move to dismiss
4 at this time the plaintiff's case.

5 THE COURT: Decision reserved.

6 MR. EDELSTEIN: I call Mr. Deighton Edwards.
7 D E I G H T O N O. ' E D W A R D S, J R.,
8 a defendant called in his own behalf, being first
9 duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. EDELSTEIN:

12 Q Where did you reside, Mr. Edwards?

13 A 16 Charlotte Place, Hartsdale, New York.

14 Q Are you an officer of Devco Management Co., Inc.,
15 one of the defendants in this case?

16 A Yes, I am sir.

17 Q In what capacity?

18 A I am the chairman and chief executive officer.

19 Q Where does Devco Management, Inc. retain its
20 offices?

21 A 410 Park Avenue.

22 Q When was Devco Management formed?

23 A 16th of March, 1972.

24 Q In what state?

25 A State of Delaware, qualified to do business in

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the State of New York.

Q When did you first meet Mr. Sinoto?

A I believe it was somewhere between the months of September and October, 1971.

Q Under what circumstances did you meet him?

A Through an introduction from a partner of mine to me at my request. Can I clarify that point? I asked my partner, Mr. Winfree, along with others that I was desirous of trying to establish a relationship between a black owned business and the Japanese market because of the growth its had in the last couple of years. Through an associate that he knows, which is a lawyer, Mr. Dew, he was advised that Mr. Winoto was at times instrumental in introducing Japanese companies to American businesses. And we entertained that introduction at that time and that was the purpose and the circumstances around my meeting him.

Q You said you had a partner. What was the name of the firm that you had a partner in at that time?

A I was a partner in the firm. I owned 10 per cent of Burnett International Development Corporation.

It is not the same as Winston Burnett Construction Company. Synonymous, but different.

Q How large a block of stock did you own in Burnett International?

1 elbr Edwards-direct 63

2 MR. DEVINE: Payment as to what, your Honor?

3 I object to the form of the question.

4 THE COURT: Any payment, is the question.

5 A Is that the question, any payment?

6 THE COURT: That is the question.

7 A No, he did not.

8 Q Did he at any time demand that he be compensated
9 for work done on behalf of the corporation?

10 A Not until July 1972 and at that time I asked him
11 to define what it was and his definition that he and I came
12 up and agreed to on the phone related to the use of his
13 office, the typing services that were used maybe two or
14 three times which we agreed on a total of \$1342.97 which
15 I was to receive a bill and compensate him for and as to
16 this date I have not received any such bill.

17 THE COURT: This was July of 1972 you had
18 this conversation?

19 THE WITNESS: That is correct, your Honor.

20 Q Did you have any discussions with Mr. Sinoto
21 prior to April 26, 1972 relative to money from Devco that
22 was to be paid to him?

23 A No, sir. None whatsoever.

24 Q On or about April 26, 1962, did you sign
25 these notes called Plaintiff's Exhibits 1 through 4; is

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2 that your signature that appears on the bottom?

3 A Yes, it is.

4 Q And on the reverse side?

5 A Yes, it is.

6 Q Can you state the circumstances surrounding your
7 execution of that instrument?

8 A With a great deal of embarrassment, I can.

9 MR. DEVINE: Move to strike that.

10 THE COURT: Strike the embarrassment.

11 THE WITNESS: Well, your Honor --- okay.

12 From December or November, I am not clear of the exact
13 time, 1971, I believe it was, Mr. Sinoto had brought to
14 my attention the fact that he was in some financial problem,
15 like many of us; and asked if I could assist through my
16 banking connections, being a bank officer, with the loan that
17 he needed to straighten out his financial problems.

18 I told him that I felt I had a moral obligation because of
19 the fact that he did render some time to Burnett Inter-
20 national and unfortunately I couldn't control the situation
21 and he was not paid, and I said I would try. I contacted
22 three banks in New York, two banks in New Jersey, and one
23 back in the Bahamas.

24 THE COURT: What banks were they?

25 THE WITNESS: I contacted Freedom National Bank,

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I contacted Franklin National Bank, I contacted First National Bank. I contacted the American Trust Bank which the high officers that was in the Franklin at the same time that I was with Mr. McCaughey, was then vice-president in charge of all loans because he had left Franklin nine months before I did. I asked him and he asked me specifically, what are the kinds of things that I have as recourse. I had actually, I can't tell you other than the fact that he says he has some patent and he has a violin of major value. He said on either one of the two items of collateral I could not loan against. I went to the Bahamas in due course of business through my association with Bahamas World and asked Nassau Bank & Trust of which the president, the chairman, etc., etc. had offered to me a loan to help them out of some business arrangements if I would agree to a contract, however I'd like to borrow money not only for myself but for Mr. Sinoto who was in difficult problems and they knew of him because they had met him through the Bahamas World arrangements, and would lend some money. They told me at that time that they were in another tight position as far as liquidity and could not loan money and specifically because of the monetary situation in the Bahamas could not lend to foreign sources.

2 I told this to Mr. Sinoto, he called me repeated-
3 ly , asks me would I loan him some money. I told him I had
4 no way to loan money, I had a zero balance myself and the
5 only thing I was surviving on was my consulting for the
6 Bahamas.

7 And then he came back and asked me would I try to
8 do something to assist him in raising money because his
9 situation was extremely critical and there was something
10 wrong with his daughter or whatever the problem was. She
11 had been in an accident or something like that. That is
12 right, her car was damaged in an accident. I then suggested
13 that what he try to do is find somebody that he knows
14 that would use his collateral, who knew him well enough
15 to feel comfortable with his collateral, because no out-
16 sider would take any value on the violin unless it had
17 an appraisal value from somebody, or no one could make any
18 value on the patents unless the patent had appraisal value,
19 which was a qualified value, and then had a market to be
20 used. He suggested that he would get back to me, and
21 that was the end of the conversation. About, I don't know,
22 a week or two, maybe longer --

23 THE COURT: Let me interrupt. You said you
24 worked for Franklin National Bank?

25 THE WITNESS: That is right. I was vice

1
2 president in loans in urban affairs. Originally I was
3 assistant manager in charge of loan and discount department
4 in Long Island and then I became the bank's urban affairs
5 chief operating officer for urban affairs and assistant
6 vice president.

7 Q Continue.

8 A Then he got back to me, I'd say one week, two weeks,
9 three weeks, I don't recall because I was very busy at the
10 time and asked me would I stop and talk with him.

11 One evening on my way home I did stop and talk
12 with him. He explained to me he had a friend, and he stated
13 the friend was of his same nationality, and if he could
14 help him get something to offer his friend that his friend
15 would advance him some money. I said well, I don't know
16 what I could get you, but I'd be willing to try because I
17 feel that you have done everything you could, no fault of
18 ours, but still you are struggling for money. I then told
19 him, find out what he wants, I said, but I don't know what I
20 can do. He came back to me and said that the friend could
21 have some notes and if I would sign the notes that he would
22 then be able to present the notes to his friend.

23 I said wait a minute. Listen, first of all,
24 I don't want any notes floating around. He said they will
25 never go anywhere. I said the cannot go to a bank, anywhere.

2 I was not fully cognizant of the real ramifications until
3 someone in June or July when it suddenly hit me what I
4 had done, I had committed a fraud myself, perpetuated a fraud
5 in essence. I then said, well, first of all, for
6 notes to be considered there has to be something behind it.
7 If I even sign on the notes there is no guarantee that I
8 have the ability to perform because of my own net worth.

9 He said well, I think he is a very close friend
10 of mine and he wouldn't even look into this. He went into
11 this over and over again. I was very reluctant to do it.
12 I was involved with the fact that he was in difficulty --
13 emotionally and at that time I felt very, very strongly
14 for him, and even today I still feel strongly, but I am
15 just sorry about the confusion. I said let me see what
16 you are talking about, and I will deal with it. One after-
17 noon about 10'clock, and I was on my way to Washington, he
18 called me and said he was to have this because he was in
19 trouble, would I sign, would I consider issuing
20 some notes. I said, Nori, I don't like the idea.
21 We hung up the phone after some conversation. He called
22 me back no more than 15 or 20 minutes later with this same
23 problem. I said okay, you got to guarantee me that these
24 notes will go nowhere because I have lived a long time in
25 this world, I have made a certain reputation and being what

1 I am I cannot take a chance to jeopardize that. He assured
2 me "I will never allow any harm to come to you or your
3 family".
4

5 I said if we understand that, then I will do
6 it. On my way to the airport with the cab waiting outside,
7 I went inside and executed the notes on behalf of myself
8 and Devco, and Devco was my corporation at that time,
9 and they were blank, and I went to the airport. I almost
10 forgot the whole incident until June.

11 THE COURT: What do you mean, they were blank?

12 THE WITNESS: The notes as far as I remember
13 were blank.

14 THE COURT: What was on them, anything?

15 THE WITNESS: No, they were not fully filled out.
16 He wasn't even in the office. The secretary presented the
17 papers to me on the second desk in his office and they were
18 all spread out and I signed them and I put the stamp
19 on one or two pieces of paper and I went straight to
20 Washington, D.C., to catch the shuttle.

21 THE COURT: Are these the papers you are talking
22 about?

23 THE WITNESS: The form of the papers that I
24 remember signing.

25 THE COURT: What was on them?

1
2 THE WITNESS: As far as I remember, nothing was
3 written on them. I know for sure there was no interest
4 rate and no typing in this area.

5 MR. DEVINE: What area is the witness indicating?

6 THE COURT: Up in this area the witness has
7 put his finger on "Pay to the order of Nori Sinoto,
8 12,500 and no, hundredths."

9 THE WITNESS: Let me state specifically, your
10 honor, that the amount was definitely not in the note.
11 I have handled over thousands of notes myself in my capacity
12 in the loan and discount department and very rarely am I
13 unaware what is on a piece of paper.

14 Q Mr. Edwards, you were in the banking business
15 for a number of years. Doesn't your background somewhat
16 contradict this type of action?

17 A I do, and it certainly does. That was the
18 embarrassment I mentioned earlier. I felt very emotional
19 about the situation. I felt that Mr. Sinoto had attempted
20 to help another corporation which was no way involved in
21 this at all and could not be involved with it because
22 it was very clear that the credibility associated with the
23 prior corporation had not only tarnished my relationship, but
24 it is tarnishing everybody's relationship and I resigned from
25 it.

Feeling very, very emotional about him, like I would my own brother, I decided to take this thing, and I didn't analyze it as thoroughly as it would have been if it was a business deal, I analyzed it on a matter of relationship, not business.

Q Did you at the time you signed those notes, did you also sign this piece of paper called Plaintiff's Exhibit 4?

A I remember signing two pieces of paper. This paper was left in his office I think about 10 or 12 sheets or more with some envelopes during the time that we had one meeting there. And yes, I do remember signing a blank piece of paper. There was nothing typed on it. That for a fact is as far as this particular piece of paper, I am sure of.

MR. DEVINE: What piece of paper is the witness looking at?

THE WITNESS: Plaintiff's Exhibit 5.

Q Did you ever dictate the wording that is on that paper?

A Not only did I not dictate the wording on this paper, I never dictated anything to Mr. Sinoto's office.

Q After the notes were delivered to Mr. Sinoto did you have any further discussion with him relative to the notes?

1
2 A Yes, I did.

3
4 Somewhere in May or June, if I remember cor-
5 rectly, I was advising the State of Connecticut to discuss
6 the solid waste problem that they have in more or less
7 a feasibility to determine whether or not in fact the
8 proceeds that Devco had agreed to acquire is in fact a
9 real business and did it offer substantial potential .
10 I had indication as I was waiting for the meeting, to call my
11 office and after calling my office Mr. Winfree told me he had
12 just me with Mr. Sinoto and that his business idea or
13 something was not going so well, and I decided to call Mr.
14 Sinoto. And in my conversation I said, hey, you know,
15 Nori, there is a problem that is still pending relating to
16 those notes. I said when I signed them I asked you to
17 give me a letter telling me that in no way would these
18 notes be used in any of the financial or credit institution
19 of this country and it was for your friend.

20 At this point he said well, I will get around to it
21 because I am very busy, I have some problems. I said
22 wont' take too long to do that because it does in fact
23 affect my family because I own the company.

24 And he repeated, I will never do anything in my life
25 to affect your family or the corporation which you are
involved with.

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2 Q Was any such letter ever received from Mr. Sinoto
3 relative to the limited liability?

4 A No, there was not. And when I at the request
5 of one or two of my partners when I realized in the summer
6 that he was feeling very hurt and this was where the whole
7 problem created --

8 MR. DEVINE: Objection.

9 A Well, whatever.

10 When I realized during the summer that there was
11 a problem that was developing, this was in June or July,
12 I went back to him and said I think it would be only fair
13 that you give me the letter in which you promised, and
14 he refused again at that time. I did ask him at that
15 same time to return the note to me. That was at the
16 Greek restaurant between 62nd and 63rd on Madison Avenue.

17 Q Was the execution of these notes approved by
18 the Board of Directors of Devco?

19 A In theory, I guess --

20 MR. DEVINE: Objection.

21 A I could say yes because I was the board of
22 directors.

23 MR. DEVINE: It doesn't call for a theoretical
24 answer, your Honor.

25 THE WITNESS: I don't know how to answer it.

2 THE COURT: Give the best answer you can.

3 A The best answer I can give is the board of
4 directors of Devco was Mr. X, but because I incorporated
5 the company, I didn't hold an official meeting, I didn't
6 do anything with the books other than to have them incor-
7 porated. There was no director other than myself.
8 The incorporator was myself. There was no board of
9 directors, there was no chairman, no chief executives,
10 no staff, no salary, until September, 1972.

11 THE COURT: At that point you were the corpor-
12 ation?

13 THE WITNESS: Yes, I was, sir. I think in
14 August or September we formed a company and in September
15 it started to do business.

16 Q What happened in September?

17 A In September we -- in August we had completed the
18 acquisition of Waste REclamation through the funds put
19 together by the person that I had asked to arrange it, and
20 we analyzed having involvement in the company at the time and
21 everybody's contribution to the company and made compen-
22 sation. I insisted against the wishes of my investor, to
23 compensate people even though they didn't perform. Because
24 the concept of developing a black owned business was probably
25 for the first time in life of magnitude being conceived.

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And I wanted to make sure that it had the full support of

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people to go ahead. My investors comment to that was, I

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don't want anybody in the deal but you, and I refused to do

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business with him on that basis until two weeks later

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we signed the deal, and in August we acquired the

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acquisiton. I had the money put up in the first of August

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and in September we started.

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Q What did Devco acquire?

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A The assets of Waste Reclamations, which was

11

patent pending and a plant.

12

Q Did Mr. Sinoto participate in any of the negoti-

13

ations relative to the acquisition of Waste Reclamation

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Company?

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A No, Mr. Sinoto met with me and the group using

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his offices because I was unable to use the office of Burnett

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International in view of the fact that I had technically

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resigned from the company and I had asked to use his

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offices, which I agree we would compensate him for. And

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he said do you mind if I sit in, and I said fine, I'd love

21

to have you sit in. And he sat in and we agreed at that time

22

on how the company would be structured subject to the new

23

investor that I had arranged to come into the company.

24

Q Who was the new investor?

25

A Certain-teed Products Corporation of Valley Forge,

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Pennsylvania.

Q Was Mr. Sinoto instrumental in bringing Certain-tee Products into the picture of your corporation?

A No, he was not. It was done by Mr. Robert Clampitt, which is what the whole issue is on.

MR. DEVINE: Was that comment on the record?

THE COURT: I didn't hear it.

THE WITNESS: That was my comment.

Q Was anybody at any time receiving compensation for services rendered to Devco?

MR. DEVINE: Objection. Irrelevant.

THE COURT: Sustained.

Q Did there come a time when you received a call from the Franklin National Bank relative to these notes?

A Yes, there was. The call was made to me, I think it was in September or somewhere in between August and September, that notes were presented to the bank by Mr. Sinoto against the account of Devco; which in fact were being changed at the time, to be actual and what was the company's intent. I said No. 1, the company had no intent. No. 2, the notes were procured in a fraudulent manner, and No. 3, there was no reason or no intent to review it or even consider it. At that time I called a meeting of the board of directors and informed them of

1 elbr Edwards-direct 77
2 what had happened, because I felt that the relationship with
3 my investor was paramount to me --

4 THE COURT: Never mind what you felt.

5 THE WITNESS: That he knew what the problem
6 was.

7 THE COURT: This is Mrs. Selma Cohen?

8 THE WITNESS: She is a personal friend of mine,
9 also like you could call it a junior officer in the bank,
10 Franklin Bank. She helped us all along in the transactions
11 especially when I am processing money that I got as a fee
12 from the Bahamas to get it cleared in New York.

13 THE COURT: Did she know Mr. Sinoto?

14 THE WITNESS: Yes, she knew him through some
15 correspondence that I had put through the bank as I related
16 to Bahamas World and Aroco, and also Edwards/Sinoto in the
17 potential sales agreement.

18 Q In your opinion, Mr. Edwards, what is the
19 value of Mr. Sinoto's contribution to --

20 THE COURT: Sustained.

21 MR. EDELSTEIN: No further questions.

22 THE COURT: Perhaps this would be a good time to
23 break for lunch. See you at 2 o'clock.

24 (Luncheon recess.)
25

AFTERNOON SESSION

2:00 p.m.

MR. EDELSTEIN: I would like to offer in evidence and I would like to ask the Court to take judicial notice of a certified copy of a certificate of incorporation of the defendant Devco Management.

THE COURT: Any objection to that?

MR. DEVINE: I don't think so, your Honor.

THE COURT: I take it you prefer not to have it physically marked.

MR. EDELSTEIN: Please.

THE COURT: That will be deemed Defendants' Exhibit -- do you have a copy of it there?

MR. EDELSTEIN: I have a photocopy.

MR. DEVINE: No objection.

MR. EDELSTEIN: No, I don't have a photocopy of it.

THE COURT: It will be deemed Defendants' Exhibit A.

(Defendants' Exhibit A was deemed received in evidence.)

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Edwards-cross

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D E I G H T O N O. E D W A R D S, J R., resumed.

CROSS EXAMINATION

BY MR. DEVINE:

Q Mr. Edwards, at the present time are you the chairman of the board of Devco Management?

A Am I now, did you say?

Q Yes.

A Yes, I am.

Q When did you begin that function, that office?

A I guess it was around July of '72.

Q Have you held that position continuously from July of '72 until the present time?

A Yes, I have.

Q Did anyone hold that position prior to you?

A I don't believe so.

Q Are you also the president of Devco Management at the present time?

A Yes, I am, but I have not always been the president.

Q When did you become the president?

A March of '73.

Q Is there also a position at Devco Management which is entitled chief executive officer?

A That is correct.

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2 Q Is that a position superior to the position of
3 president?

4 THE COURT: You hold that position too, don't you?

5 THE WITNESS: Yes, I do.

6 A Yes, it is.

7 Q Has it always been a superior position to that of
8 president?

9 A I think so. Yes, I believe so.

10 Q When did you assume that office?

11 A I would imagine in September of '72.

12 Q Did anyone hold that office prior to your holding
13 it?

14 A No. At least, I don't believe so.

15 THE COURT: What percentage of the stock do you
16 own at this point?

17 THE WITNESS: 42.5 per cent.

18 Q Have you ever owned less than 42.5 per cent
19 of the stock of Devco Management?

20 A No.

21 Q Have you ever owned more than that?

22 A Yes.

23 Q On a percentage basis?

24 A What do you mean by that?

25 Q Have you ever owned more than 52 --

2 A I did own a hundred per cent.

3 Q During what period of time did you own a hundred
4 per cent?

5 A From its incorporation until the month of July.

6 Q Of 1972?

7 A Correct. And I use that as an estimated date.
8 I don't know the exact date.

9 Q When you signed Plaintiff's Exhibits 1 through 4
10 what was your understanding as to what was to be done with
11 those notes?

12 A As I stated earlier, he was using those notes with
13 a friend of his to try and obtain capital, and I guess
14 he conceptualized that I was lending him some money at the
15 time.

16 Q You understood that Mr. Sinoto was going to
17 pledge your notes, is that correct?

18 A No, that was not the case at all. He was going
19 to present the notes, not pledge, but I specifically said
20 it could not be pledge, repeated to a friend of who
21 knew him personally and I have had friends of mine that
22 will lend me directly, a substantial amount of money.
23 I say 3, 4, \$5,000, who was going to lend him money,
24 and this friend of his was of his same nationality.

25 Q Did he tell you the name of that friend?

1
2 A No, he did not.

3 Q Did you inquire?

4 A I might have, I don't recall if I did. I doubt
5 it.

6 Q Did you have any conversations with that friend
7 as to what would be done with the notes?

8 A None whatsoever.

9 THE COURT: Did you ever meet the friend?

10 THE WITNESS: No, I didn't, your Honor.

11 Q Did you ever seek to meet him?

12 A No, I don't think I did, no. All my suggestions
13 were between myself and Mr. Sinoto personally.

14 Q And you never inquired as to the name of this
15 person?

16 A I did when I found out that he was going to use
17 the notes, I wanted to know who the party was and at
18 that point he said he felt I didn't have to answer that
19 question.

20 Q You knew all along that he was going to use
21 these notes with respect to his friend, is that correct?

22 A That is correct.

23 Q When was it that you inquired what his friend's
24 name was?

25 A When he told he didn't want to return them,

because I want d to write a letter to his friend and tell him that the notes were not given to him for the purpose other than what was stated in our discussions.

THE COURT: I don't quite understand what that purpose was.

THE WITNESS: It's very difficult to understand, your Honor, as I think about it myself, it's very difficult to understand. The purpose of the notes was to help him raise money. I couldn't loan him money. I couldn't loan him money; if I had the opportunity and the ability to, I would have.

So what I did, in view of the fact I didn't have money, gave him something that he could use with his friend to get cash. He was going to show them. it sounds like child's play, but that is a fact. I guess when you get emotional, you care for somebody, you do silly things. It happens in life.

he said he ^{was going} was going to show the notes to his friend. The notes were then going to give his friend justification, if I can finish that point, to lend him money and that he himself was going to put a date on the notes which I didn't know what date or amount were on the note -- I take that back about amount, he was going to put a date on the note that would in fact be giving him

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2 enough time, Mr. Sinoto enough time to raise the money to pay
3 it back himself. And we agreed that the notes could not
4 be any more than \$12,000 because he said he needed \$12,000,
5 and that was the amount in which I ask Mr. McCaughey and Mr.
6 Buchbinder and everyone else to loan, \$12,000.

7
8 So when all that other material came out, I can't
9 justify it because it was not discussed at all at any time
10 until the notes were presented to Franklin National
11 Bank did I know the denomination of the notes, the payment
12 dates or the payee or payor.

13 Q Do you remember being deposed in this case?
14 Do you remember having your deposition taken in this case?

15 A Yes, sir.

16 Q I am going to read you a question and an answer, and
17 I would like you to tell us whether or not you recall
18 being asked a question and giving this answer.

19 "Questioned on your conversation with him", Mr.
20 Sinoto, "on that day and any other conversations you had
21 with prior to that day what did you expect Mr. Sinoto to do
22 with those notes?" I am reading from page 24.

23 "A What did I expect him to do? When you say do,
24 as far as giving them to me? I expected him to give them
25 to me after he got his money, that he claimed was forthcoming
and I expected him to use the notes by giving them to

his friend or whoever he was, as side collateral, as he stated in his terminology, side collateral."

Do you remember giving that answer?

A Yes, I think that is the answer I gave and that is the answer I meant. By the word side collateral, collateral whatever, is a banker's terminology. Because it is not directly relating to a loan. It is side collateral.

THE COURT: What does that mean, in banker's terminology?

THE WITNESS: In banker's terminology it means that actually it is not really pledged but it is offered as evidence of payment, and that is what I interpreted it by meaning. The word side collateral if it is purely used in my judgment, I rescind it. But I still mean it was offered as evidence of ability to pay.

THE COURT: In that answer he said I expected them to return it to him, which is inconsistent with the idea of any other kind of collateral.

MR. DEVINE: I don't think so, your honor.

THE COURT: If the notes have been paid and the collateral returned, then of course it would be returned.

THE WITNESS: No, the notes wouldn't be returned.

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2 Q Mr. Edwards, I am going to show you Plaintiff's
3 Exhibits 1 through 4.

4 THE COURT: Do you have an extra set?

5 MR. DEVINE: Your Honor, I have a set which was
6 photostated with some other documents which are also in
7 evidence, so I don't think there is any difficulty.

8 THE COURT: Just so I can follow what you are
9 doing.

10 (Pause.)

11 Q Wouldyou look at those four exhibits, Mr. Edwards,
12 and tell us what portions of those notes were blank when you
13 signed them?

14 A As far as I can remember, and as I said, it was
15 all done within a matter of three to five minutes while a
16 cab was waiting outside, the lower portion of the notes
17 might have been some filing, I don't recall that.

18 But I remember the parts that related to numbers
19 and dates and where it fills in the party who the
20 note is made out in order of, was all blank at the time,
21 as my memory remembers, because they were sitting like this
22 on his secretary's desk. The secretary was the only one
23 present in the room unless he was in another room. I was
24 told by her that he was out of the office, and I was told
25 by him when I spoke to him and said I would stop by on the

way to the airport, that he would not be in the office, he had a 1 o'clock appointment downtown.

Q Did you look at those notes before you signed them didn't you?

A Very briefly. I was on my way to Washington.

Q Which portions of the notes did you look at?

A I can't answer that question accurately, other than say I looked at them very briefly, and I signed them. If I could have answered that question, then I would be able to tell you exactly what is on it.

Q Did you comment to anyone who was present in the office as to the condition of the notes?

A Yes, I did. I remember telling his secretary at the time that the notes were not filled in, what was the amount going to be put in there, et cetera, and she said Mr. Sinoto had run out of the office to a meeting as he stated to you, and it is unfortunate it was all not done, and it would be done and quote, copies would be sent to you.

THE COURT: Is that the young lady who was here this morning?

THE WITNESS: I didn't recognize her as being the same party unless she gained a lot of weight. Her secretary's name at that time as far I know was Carmen.

2 THE COURT: Is that Carmen who was here?

3 MR. DEVINE: No.

4 THE COURT: Do you know who Carmen is now?

5 MR. DEVINE: Yes, we do.

6 Q I show you Plaintiff's Exhibit 5, Mr. Edwards and
7 I ask what that document was filled in when you signed it.

8 A No, it wasn't it.

9 Q I think you testified it was not.

10 A No, it was not.

11 Q Was it completely blank?

12 A I don't believe so. I am not sure. * I am really
13 not sure.

14 Q Did you look at it before you signed it?

15 A I remember signing a blank piece of paper.
16 whether there was a few numbers on it -- there was no
17 letter composed. There was not a letter composed on that
18 thing. I don't even remember my name or very truly yours
19 being put in at that time.

20 THE COURT: You do or you don't remember?

21 THE WITNESS: I don't remember.

22 Q When was it that you signed that?

23 A If I am not mistaken it was all signed at one
24 time, but I did not go back to Mr. Sinoto's office, as far
25 as I can recall, from the date of signing those notes

other than for two meetings which were held somewhere May or June.

Q When did you put the seal of Devco Management on the document?

A I think it was all done the same time, because the seal was with me.

Q You had the seal with you at all times?

A At that time I did.

Q You carried it with you at all times?

A Because I did not have an office to work out of. My briefcase was my office.

Q That letterhead recites 15 Columbus Circle as an office, is that correct?

A That is right.

Q Was there an office there?

A That is where I received my mail. The office was by the name of Burnett International Development Corporation.

THE COURT: 15 Columbus Circle is where the NAACP's offices are, is that right?

THE WITNESS: No, they are across the street. Unless they moved that is on Seventh Avenue between 57th and 58th. The old building, across from the old General Motors Building.

THE COURT: They have a Columbus Circle address.

THE WITNESS: You are correct. It is across the street from the old General Motors Building. That is the Gulf and Western Building where this office was.

Q Did Mr. Sinoto have any dealings with Selma Cohen or with respect to Devco Management?

A Oh, with respect to -- no, not that I know of.

Q None at all?

A Not that I know of.

Q Did you ever tell Mr. Sinoto that Selma Cohen was in charge of the account of Devco Management?

A He knew that -- no, I didn't. He knew that Selma Cohen was involved with any transaction that I had through Franklin National Bank, because she was indirectly my officer.

Q But he didn't know that she didn't have anything to do with Devco Management, did he?

A That I couldn't tell you.

Q And you never told him that?

A Not that I recall.

Q In fact, did Devco Management have an account at Franklin National Bank?

A Yes, it did.

Q Did Mr. Sinoto know that?

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2 A I would imagine he might have heard it in conver-
3 sation. I don't know whether it was told to him directly
4 or not. All my accounts were at Franklin National Bank.

5 Q Did you ever tell him that Devco Management had an
6 account at Franklin National Bank?

7 A I don't recall if I did or didn't. As I said,
8 all my accounts and every one that knew me knew that all
9 my accounts were at Franklin National Bank. Personal and
10 corporate and otherwise.

11 Q Was there no difference between Devco Management
12 and your own personal accounts?

13 A I don't know how you -- I don't understand the
14 question. Of course there is a difference. Devco
15 Management is a company I formed and Deighton O. Edwards is
16 a person. Of course there is a difference.

17 Q What I am having difficulty with is how
18 Mr. Sinoto would know that Devco Management had an account
19 at Franklin National Bank simply from the fact that you had
20 an account there.

21 A Because he was close enough to me in 1971 during
22 the period of Burnett International to know exactly what
23 I was doing at all times, okay. And so was Mr. Moore and
24 everyone else.

25 Q In April of 1972 was there any money in the account

2 of Devco Management at the Franklin National Bank?

3 A I don't believe there was an account there in
4 April. The account was probably opened up in June, if I am
5 not mistaken. I am not sure.

6 Q Was there any money in the account in June?

7 A I doubt it.

8 Q Was there any money in the account in September?

9 A Yes. Very little. I don't remember the exact
10 number, but you have the records.

11 Q Prior to the date on which these notes were pre-
12 sented was there \$50,000 or more in that account at any
13 time?

14 A No, sir.

15 Q Are you sure?

16 A Yes, sir. Prior to the date of these notes,
17 is that what you asked me?

18 Q The date on which the notes were presented.

19 A Oh --

20 Q Between April and September of 1972?

21 A Could have been. I don't remember whether the
22 money went into Franklin or into Chemical, but when we
23 sold stock in August or September we did receive a check for
24 \$50,000. It was in no way synonymous with this \$50,000 .

25 Q Devco had another account, then?

1 A Yes, when we initially formed a corporation
2 we opened an account and put everything in order. In
3 essence the only person responsible for the account when
4 it was at the Franklin was me because I owned the company
5 and when we finally found the investor and put the corpor-
6 ation together we put the account together and the board
7 gave approval where to establish the account and that was at
8 Chemical Bank, not Franklin National.
9

10 Q Devco Management had an account at both places,
11 is that right?

12 A That was only during the period of closing one,
13 opening the other.

14 Q Did that period cover the April to September of 197-
15 period?

16 A What period?

17 Q Was the Franklin National Bank open during that
18 period, April through September of 1972?

19 A I don't recall the date it was open, but the
20 records could certainly state that. The account was
21 closed in August or September, no later than October, if
22 I am not mistaken.

23 THE COURT: Do you have all the records on this?

24 THE WITNESS: Yes, he has.

25 MR. DEVINE: I don't believe there is any disagree-

ment about that, your Honor. There was substantial moneys in that account during the period.

THE COURT: When was it open? If it is relevant, tell me.

MR. DEVINE: I have been given at least some of those statements. I am not sure I can say when it was opened. But from the statement we have been given it is clear that there was more than \$50,000 in the account prior to September of 1972. I think Mr. Edelstein will stipulate to that.

THE WITNESS: The money that was in Devco Management prior to July 18th or something thereabouts was put in by me, which never totalled more than \$700 to a thousand dollars. The money that was put in Devco from July to September was put in by the investor who invested and purchased 12,000 shares and at that time the \$50,000 I believe was put in the Chemical. It might have been put in the Franklin. But that was certainly after the company was formed. Before then it wasn't even a company.

THE COURT: I don't know what the relevance is, but if there is relevance, why don't we have the exact facts instead of speculate.

MR. EDELSTEIN: I believe the statements that Mr. Devco has indicated that there was a substantial

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2 deposit made in the Franklin Bank some time during the
3 summer.

4 THE COURT: When?

5 THE WITNESS: Must have been August. Had to be
6 August.

7 THE COURT: Let us not speculate as to when it
8 had to be. Let us get the evidence.

9 MR. DEVINE: Your Honor, the monthly statement
10 to Devco Management from Franklin National Bank dated
11 September 29, 1972 shows a deposit or credit of \$50,000
12 on the 1st of September, 1972, bringing the balance to
13 \$50,007.33.

14 THE COURT: That I take it was the purchase of
15 stock?

16 THE WITNESS: That is correct.

17 THE COURT: I don't quite see the relevance of that
18 fact, but at least we understand.

19 MR. DEVINE: Your Honor, it was raised on direct
20 of this witness. I just wanted to clarify the record.

21 Q Did you ever give Mr. Sinoto a personal financial
22 statement of yourself?

23 A Yes, I did.

24 Q When did you do that?

25 Q Must have been somewhere around the same time he

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2 asked me to be a maker --

3 Q Same time as what?

4 A I will finish, please. To be a maker of the notes.
5 I believe I gave him a personal statement of myself and I ask
6 ed my account to make up some sort of statement as to what I
7 felt would be Devco, you know, what was in Devco. I think
8 it was done on a pro forma basis. I am not positive of
9 that. But I did give them both because he said he wanted
10 to show something to his investor that he was dealing with.
11 I told him at that time any man who would lend against my
12 statement had to be insane.

13 Q I think you had on direct examination that you
14 didn't have any worth at that time, is that correct?

15 A No worth of any value. I have a negative net
16 worth. That is correct. I said it and I say it now.

17 Q You said at that time that you had a negative net
18 worth?

19 A That is correct.

20 MR. DEVCO: I ask that this one page document be
21 marked Plaintiff's Exhibit 15, your honor, because I have
22 premarked documents 13 and 14 which I will get to in a
23 minute.

24 THE COURT: I thought the diary was marked 15.

25 MR. DEVINE: We didn't mark that because we

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Edwards-cross

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2 didn't reach an agreement.

3 THE COURT: Better make this 16.

4 (Plaintiff's Exhibit 16 was marked for
5 identification.)

6 Q Mr. Edwards, I show you Plaintiff's Exhibit 16 for
7 identification and ask if that is the financial statement
8 which you gave to Mr. Sinoto.

9 A Basically it is, but he's made some changes in it
10 because I gave it to him on a yellow sheet of paper.

11 THE COURT: That piece of paper is not what you
12 gave to him, is that what you are saying?

13 THE WITNESS: No, sir. This is not even my
14 typewriter.

15 Q Does that document, Plaintiff's Exhibit 16, bear
16 your signature?

17 A It does.

18 Q Did you sign it?

19 A I must have.

20 Q When did you sign it?

21 A I can't recall.

22 Q Did you read it before you signed it?

23 A I don't recall.

24 Q Do you have a practice of signing things you don't
25 read, Mr. Edwards?

MR. EDELSTEIN: Objection.

THE COURT: Overruled.

Do you or don't you?

THE WITNESS: State the question.

Q Do you have a practice of signing things that you do not read?

A At times. I am not a very good man for detail.

Q Would you look at Plaintiff's Exhibit 16, please.

A I did.

Q To the best of your recollection tell us what is inaccurate about that statement?

A Several things. One, my loans are higher. No. 1, I do not have a thousand dollar cash value life insurance. I cannot respond to the cash in the bank because I have no knowledge of what it was at that time, and everything else seems to be fairly close. My mortgage is not 18,000, it is \$20,000. It is 20,000 now so it couldn't have been 18 then. I don't know what this note is for \$250. Other than that, I think it is close.

Q What was your net worth at the time of that financial statement?

A Zero.

Q Did you tell Mr. Sinoto that it was zero?

A Not only did I tell him, I explained to him when I

gave him the statement that there was no value, and when you looked at the assets minus the liabilities you got to come up with zero, and there was no way anybody in his right mind, I don't care who he was, unless he was a very, very close friend could loan against that.

Q Plaintiff's Exhibit 16 for identification shows a net worth line immediately above your signature line, doesn't it? Doesn't it show \$75,000 of your net worth?

A That is not tangible.

Q That is correct, and it was correct at that time?

A Wait a minute. You are trying to determine the accountant term for net worth. There is two accounts for net worth, negative and positive. Tangible and intangible. When you talk about net worth for the borrowing it has to be tangible. So therefore you couldn't use it as any sort of collateral or guarantee. I may be idiotic in terms of signing papers but I know about lending ability.

Q The line which indicates a positive net worth of \$75,000 appears above your signature, doesn't it?

A It does not appear as a positive --

THE COURT: He ask you where it appears.

THE WITNESS: It appears that way as \$75,000 and I don't know how he came up with \$75,000.

2 Q Did you see that part immediately before you signed
3 it? Did you see that part immediately before your sig-
4 nature, before you signed it?

5 A I don't recall. I don't know whether it was signed
6 at the same time I signed the notes or what, I don't re-
7 call.

8 THE COURT: May I see it.

9 (Pause.)

10 THE COURT: What is this cash in bank, \$1500,
11 and the cash in other banks \$4500?

12 THE WITNESS: I don't know about the \$4500. The
13 \$1500 is what I received from a retainer from the Bahamas,
14 probably. It should be \$1300, not the other figure. That
15 is the only income I had during that period.

16 THE COURT: What is this 4800 cash in other banks?

17 THE WITNESS: You got me, your honor.

18 THE COURT: What other banks did you have the
19 cash in?

20 THE WITNESS: I did not have cash in any other
21 banks.

22 Q Mr. Edwards, during what period of time were you
23 associated with the Franklin National Bank?

24 A 1969 to 19 -- 1967 to 1970, I believe.

25 Q Was it your correct testimony that you were not a

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2 loan officer?

3 A I was not a loan officer.

4 Q Tell us what your duties were at different times.

5 A I was in charge of putting on and taking off notes,
6 accruing the interest and putting the notes on, trial bal-
7 ances for every day at the end for the bank and making the
8 banking reports to the controller for that branch while my
9 first year and a half at Franklin, the other year I was in
10 charge of urban affairs.

11 Q Were you ever an officer of that bank?

12 A Yes, I was.

13 Q During that period of time were you an officer of
14 the bank?

15 A The last two years or year and a half, before
16 I left.

17 Q During the period of time that you were with the
18 Franklin National Bank did you learn or did you know the
19 difference between negotiable and non-negotiable notes?

20 A I certainly did.

21 Q What kind of notes or the notes which are
22 Plaintiff's Exhibits 1 through 4 in this case?

23 A You want my determination or you want the technical
24 determination?

25 Q At the time you signed those notes what did you

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believe them to be?

A I believed them to be a piece of paper giving Mr. Sinoto the chance to raise some money to save his family.

Q By their terms were they negotiating or non-negotiable?

A By their terms they were negotiable, technically.

Q You understood that at the time you signed them?

A I don't think I thought about it at that time, but if you want me to say did I analyze it, no, I did not at the time.

Q While you were a bank officer for Franklin National Bank or even before that time, did you learn what a holder in due course was?

A That term, no, that I don't understand exactly. I think I know^w what you mean. What do you mean by that?

Q I am inquiring whether you learned the meaning of the term while you were --

A A holder of a note during a period of time until it becomes valid, correct.

THE COURT: Until it becomes due, you mean?

THE WITNESS: Unless^b it becomes due, yes.

Q Do you know how a holder of a note becomes a holder in due course? Do you understand that?

A I understand the whole process, sir.

2 Q You do understand the whole process?

3 A Yes, I do.

4 Q When you signed the notes which are Plaintiff's
5 Exhibits 1 through 4 did you understand that a holder
6 in due course might acquire those notes?

7 A The issue never became an issue in my mind because
8 I was not signing notes that were ever going to be used.
9 They were not discussed in that intent. It was discussed
10 as a piece of paper to help a man out of a problem, period.
11 And I will not allow myself to be considered or used or
12 misinterpreted in that statement, because it means a hell of
13 a lot to my personal being as well.

14 MR. DEVINE: Your Honor, I move to strike the last
15 portion of that answer as not responsive.

16 THE COURT: Yes, strike it.

17 Q Did you understand in April of 1972 that a
18 negotiable note could be acquired by a holder in due
19 course?

20 A Yes, if someone gave it to him.

21 THE COURT: Not gave it to him.

22 THE WITNESS: I beg your pardon?

23 THE COURT: You don't become a holder in due
24 course by being given a note.

25 THE WITNESS: I am sorry; right. Yes, I did.

Q You testified this morning, if I am not mistaken, that you expected Mr. Sinoto to deliver to you a letter of some kind?

A Yes, I did.

Q What kind of a letter was that?

A The letter was an item I asked him for as I was running out of the office, I told him I'd stop by and sign this paper for him that day that would relieve me and anything that I had done for him at this particular time from any obligation because I explicitly said to him that I did not want to affect my family or the name of anybody that was involved in what I was doing with something like that. And he said he would get me that note and he repeatedly said that in no way did he ever intend or would he ever intend to hurt me or my family, period, quote.

Q Are you sure what you expected was a letter to him?

A Yes, sir.

Q Did you ever write him a letter to that effect?

A No, sir.

Q You never did.

A I didn't have time to write anybody.

Q Are you positive that you never wrote?

A A letter to that effect about what, returning the notes?

1
2 Q To any effect, following that --

3 A You have to be more specific. I did millions
4 of letters. Did I write a letter asking him to return
5 notes, no I did not.

6 Q Did you discuss with him this letter,
7 in any way discussing or explaining the circumstances
8 under which the notes were signed?

9 A After I presented the notes to the bank, I did.

10 Q Before that time?

11 A No, not to my knowledge.

12 Q Do you remember giving the following answers to the
13 following questions at your deposition: Page 26:

14 "Q Around the time you signed those notes did you
15 ever demand of Mr. Sinoto he provide you with this agree-
16 ment that you mentioned?

17 "A Yes. About 18 times.

18 "Q Did you demand it in writing?

19 "A No, the last time I demanded it it was a phone
20 call.

21 "Q You never demanded it in writing?

22 "A No, at least I don't recall -- yes, wait a
23 minute. Wait a minute. I believe in a letter subsequent to
24 that I referred to resolving this matter and I am hazy.
25 I have to find it if there was a letter. I believe

1 in a letter subsequent to that I mentioned it to him and
2 I correct myself the last time that I talked to him about
3 returning those notes and giving me from Texas, if he still
4 had them with the third party who had a Greek restaurant
5 between 73rd Street and 74th Street or 66th Street and 67th
6 and Madison and we had lunch.
7

8 "Q We will leave a blank in the transcript and you
9 will identify the letter.

10 "A If I can find it.

11 "(Two blank lines.)"

12 This was a year ago, Mr. Edwards, and those
13 blanks have never been filled in. Can you do that now?

14 A Whoever was taking stenography has made several
15 typos. No. 1, it wasn't the owner of a Greek restaurant.
16 It was discussed at a Greek restaurant, as I mentioned
17 earlier at the trial this morning, between 62nd and
18 63rd. The letter I think we are referring to was a letter
19 that was written by me to the bank after which the bank
20 notified me that the notes were presented for payment.

21 Q You signed and corrected this transcript before
22 trial, is that correct?

23 A I made some notes and gave it to my attorney,
24 yes.

25 I was told I could not correct on those papers,

so I gave him some notes on yellow paper with different lines

MR. EDELSTEIN: May I interrupt. If there is a blank in the transcript of the deposition, it is only because such letter, if it existed was unable to be located, and therefore it is not with us today. He can only give oral testimony of what value it has whether he did or didn't send such a letter.

Q You testified that there were errors in the transcription of the portion I just read, your Honor, and he signed this deposition and it was notarized by his attorney and returned to me.

THE COURT: I don't quite see what the significance of that is. The blank obviously means that he didn't find the letter.

MR. DEVINE: I don't think it necessarily means that, your Honor. The blank is there and it is still blank, there is plenty of room to write "yes," "no" or "I didn't understand it."

THE COURT: He wasn't told to write yes or no. As I remember the reading, you said if you find it, put it in. What did you say?

MR. DEVINE: We will leave a blank in the transcript and you will identify the letter.

A If I can find it."

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THE COURT: It says quite clearly that he will identify it. Not finding it, there is nothing to do.

MR. DEVINE: I was referring to the witness' statements, your Honor.

THE COURT: That is a very confusing statement. I don't see that it has any bearing on the issue. It has nothing to do with that blank.

MR. DEVINE: Not the blank at all, your Honor. The statement that is contained in the portion I read indicates a letter from Mr. Edwards to Mr. Sinoto. And today he has testified firmly and certainly that the letter was to go the other way, that he never wrote to Mr. Sinoto.

We have premarked, your Honor, two documents, two booklets, one is Plaintiff's Exhibit 13 and the other is Plaintiff's Exhibit 14, and I would now ask that they be marked on this record for identification.

(Plaintiff's Exhibits 13 and 14 were marked for identification.)

THE COURT: Are you offering them in evidence?

MR. DEVINE: I'd like to show them to the witness at this point. I would offer them if there is no objection, at this point.

MR. EDELSTETH: Subject to any relevancy, I have

1 elbr Edwards-cross 136

2 Q As a result of Mr. Sinoto's letter to Mr.
3 Lincoln --

4 A Nothing happened.

5 Q Didn't you receive a letter of March 22, 1972
6 from Mr. Jenkins of the Department of Commerce?

7 A Very possibly. I think the letter came because
8 Mr. Britain visited and he was trying to get the program
9 off the ground; the Department of Commerce.

10 Q Doesn't Mr. Jenkins refer in his letter to Mr.
11 Sinoto?

12 A I said yes.

13 Q To prior correspondence with Mr. Jenkins and Leonard
14 Garment of the White House?

15 A Yes.

16 Q All of these letters were included in this booklet
17 regarding Devco Management with your authority, is that
18 correct?

19 A Yes, because I think the purpose of it, as I
20 remember questioning Mr. Clampitt was to establish that the
21 people involved were known to the administration, period.

22 Q There came a time when you offered stock of
23 Devco Management to Mr. Sinoto, isn't that true?

24 A That is correct.

25 Q When was that?

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2 A On, must have been in July. Mr. Lynch of Lehman
3 Brothers --

4 Q Of what year?

5 A '72. Mr. Lynch of Lehman Brothers had put together
6 the financing, working with Mr. Clampitt, and it then
7 became time to start to think about structuring the company.
8 And I suggested to him the structure --

9 THE COURT: To whom?

10 THE WITNESS: I was talking to Mr. Lynch. And he
11 suggested at that time that the company be structured in such
12 a way that the investor would have an opportunity
13 to get a minority share of the company and still not
14 lose the value of a black owned company. Because in most
15 cases for the amount of money we were seeking you would
16 normally lose control of the company and it wouldn't remain
17 as a minority or black owned company. So we sat down and
18 made an evaluation as to past, future -- past, current
19 and future considerations as it related to anyone in the
20 company. And on the basis of that evaluation it was
21 determined that the only person that could be compensated
22 was myself, Mr. Clampitt and Mr. Moore.

23 So I went back over it because I wanted to
24 develop a company that had not only national but multi-
25 national ramifications and potential, that the way to do it

1 was to involve everybody on a limited scale so that they
2 could be able to participate in the future. And in so
3 doing through Mr. Lynch, who is one of the major analysts
4 on Wall Street, he said anybody that is in it or had par-
5 ticipated in the formation of Devco Management, for the
6 acquisition of Waste Reclamation, was to give them a nominal
7 amount of shares. I said when you say give, do you mean give
8 and he said no, you have to pay for it.

10 So I structured the company so that those people
11 who did not have any money at that time could participate
12 in the corporation.

13 And in so doing they recommended to give every-
14 body below a certain level 5,000 shares, which was more than
15 the company was worth, without any question, or they were
16 worth, as to this participation.

17 I insisted on several people getting more because
18 I felt their future contribution to be so strong. He
19 advised me that you can't give stock on future considerations.
20 So I suggested that we find a way to do it. The people
21 that were involved in that was Mr. Moore, Mr. Clappitt,
22 Mr. Lynch for finding the money and I was hoping Mr.
23 Sinoto could link us together with the Japanese and
24 I said we will keep 10,000 shares for Mr. Sinoto because
25 he will get 5 per cent of the Japanese American joint venture

1 if Simitomi agrees to go into the project with us.

2 Simitomi failed to agree, therefore that project was dead and

3 all during that period of time we did not know about

4 Simitomi's failure until almost a year later to comply with

5 the request so therefore I allocated 10,000 shares for

6 Mr. Sinoto and told him that a portion of the money that we

7 needed I would be able to put off until somewhere in

8 September, as far as payment. And he refused to accept

9 the shares because he said, well, "I had envisioned myself

10 with somewhere around 50,000 shares. But we also envisioned

11 ourselves as owning 80 per cent of the company. However,

12 the investor will not allow 80 per cent ownership and it will

13 have to be done entirely different and since we have taken

14 a 40 per cent cut you will have to get somewhere around five

15 or 10,000 shares. If you are not interested in that I am

16 authorized to pay you cash for the value of those shares

17 which is 6 cents a share." That is when we were in the

18 Greek Restaurant. All of that took place, twice, I should

19 say.

20 Q You made a written offer to Mr. Sinoto, didn't

21 you?

22 A I don't recall. A written offer?

23 Q Yes.

24 A I don't know if I did. I don't think so.

2 Q You don't think you ever offered him shares in
3 writing?

4 A I don't recall. I don't think so. Of Devco
5 Management?

6 Q Yes.

7 A No, I doubt it. I might have, but I doubt it very
8 much.

9 Q 10,000 shares?

10 A That was the offer we made, sure.

11 Q Class A stock?

12 A I don't recall. I might have.

13 Q And an option to buy Class B 15,000 shares of
14 Class B?

15 A That probably was before we had structured the
16 company because there was two classes of stock. When we
17 formed the company there were two classes of stock, Class
18 A and B. When we put the company together and we actually
19 took the corporate structure and put the company together,
20 at that time we structured who the people were, et cetera.
21 They changed the Class A and B to just one class of stock,
22 which is common.

23 Q When was it that you offered Mr. Sinoto 10,000
24 shares of Class A and an option on 15,000 shares of Class B?

25 A To guess at the time, I'd say that it must have been

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somewhere --

Q We don't want your guess. Do you have an approximation?

A I can't give you an exact answer.

Q Can you say whether or not it was before April of 1972?

A I would imagine it was after April.

Q Do you know whether it was before September of 1972?

A It would have to be before.

Q It was between those two dates?

A If my memory is correct --

THE COURT: Do you have the letter --

THE WITNESS: Between April and September.

MR. DEVINE: I ask that this three-page document be marked as the next exhibit.

(Plaintiff's Exhibit 17 was marked for identification.)

THE COURT: Let us take a short break.

(Recess.)

Q Mr. Edwards, you have before you Plaintiff's Exhibit 16 for identification. Does that refresh your recollection as to making an offer of stock to Mr. Sinoto?

A You said that I wrote a letter, counsel.

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Q No, I didn't say any such thing.

THE COURT: You asked him if he did?

THE WITNESS: You asked me if I wrote a letter,
counselor.

Q I asked you if you had ever written --

A A letter.

THE COURT: The question is, did you write him
a letter, as I remember it.

Q Question withdrawn. I will allow the record to
speak for itself in that regard. I ask you whether that
document refreshes your recollection as to whether
you ever transmitted a written proposal to Mr.
Sinoto offering him stock in Devco Management?

A Okay. The answer to that, yes, and there was
no question about it.

Q Is that document which is in front of you
Plaintiff's Exhibit 16 for identification --

A 17.

Q 17; the document which you transmitted to
Mr. Sinoto.

A I transmitted this document to everybody in-
volved with me that I felt could lend something to Devco
Management specifically.

Q That has Mr. Sinoto's name on it, doesn't it?

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A I transmitted this document to everybody. If you read it all the way through you will see it refers to everybody.

Q But does it have Mr. Sinoto's name on it?

A Yes.

Q You transmitted that particular document to Mr. Sinoto, didn't you?

A Yes, I did.

Q And it is signed by you?

A That is correct.

Q It is signed in two places, isn't it?

A That is correct.

Q And those are your signatures?

A That is correct.

Q And that recites that this stock offer was being made for past consideration, is that correct?

A No, I did not say that.

Q I said does this document recite that?

A It says past and future considerations. The stock that I gave to everybody in Devco was possibly done on past consideration, and if I didn't word it like that because the investors would not have allowed me to give anybody stock because nobody is to be given stock directly quoted from the president of Certain-teed and Lehman

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2 pros., that did not participate in its involvement from the
3 time of inception. And the only way I could give people
4 stock, which was black people because I was trying to form a
5 black company and other minorities was to draft a declar-
6 ation like that which was in turn submitted to the invest-
7 ors. And that is how he got stock, that is how everybody.
8 They called me Santa Claus, if you want to be exact. Be-
9 cause I gave stock, because they told me I couldn't give
10 it and I found a way to give it. If you want to turn that
11 around we can sit here and talk about that, because that is
12 not the intent. It was past and future considerations.

13 MR. DEVINE: I offer Plaintiff's Exhibit 17,
14 your Honor.

15 THE COURT: Any objection?

16 MR. EDELSTEIN: May I just have a two-question
17 voir dire?

18 THE COURT: Yes.

19 MR. EDELSTEIN: Is there a date on this,
20 Mr. Edwards?

21 THE COURT: It doesn't say so.

22 THE WITNESS: Not to my knowledge. It was
23 done around the 1st of June we started talking with
24 Certain-tyed.

25 MR. EDELSTEIN: Was this resolution or this

2 memorandum adopted by the board of directors of Devco?

3 THE WITNESS: No. There was no board, there
4 was no directors and no stockholders other than myself.

5 MR. EDELSTEIN: Are there minutes of any meeting
6 relative to the issuance of these options?

7 THE WITNESS: No.

8 MR. EDELSTEIN: I object to the admission on this.

9 THE COURT: Overruled. It is received, as far
10 as I can understand it is offered solely for the statement
11 in consideration for past consideration, is that right?

12 MR. DEVINE: Yes, your Honor.

13 THE COURT: It is evidence on that issue, whatever
14 it may be worth.

15 (Plaintiff's Exhibit 17 was received in
16 evidence.)

17 MR. DEVINE: Your Honor, I should indicate that
18 in the question regarding that document I think I may have
19 referred to it as 16, on one or two occasions. I would
20 ask that the record be clear.

21 THE COURT: You are talking about 17?

22 MR. DEVINE: 17.

23 Q On the 25th of January of 1972, Mr. Edwards, were
24 you considering some proposal with relation to Devco?

25 MR. EDELSTEIN: Objection. That is somewhat

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2 MR. EDELSTEIN: That is all.

3 No further questions. That is the defendants'
4 case, your Honor.

5 (Witness excused.)

6 THE COURT: Any more rebuttal?

7 MR. DEVINE: Your Honor, may I have a minute or
8 two to look at some notes and make a decision on that?

9 THE COURT: We will take a short recess.

10 You let me know when you are ready.

11 (Recess.)

12 MR. DEVINE: Your Honor, I am going to recall
13 Mr. Sinoto as a rebuttal witness, very briefly.

14 N O R I S I N O T O, recalled.

15 DIRECT EXAMINATION

16 BY MR. DEVINE:

17 MR. DEVINE: May I have this document marked as
18 the next plaintiff's exhibit for identification.

19 (Plaintiff's Exhibit 20 was marked for
20 identification.)

21 MR. DEVINE: Your Honor, I'd like to offer this
22 document. I could ask a couple of foundation questions,
23 which I think might be advisable.

24 Q Mr. Sinoto, after court session yesterday did
25 you look in your files?

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2 A Yes.

3 Q Did you have an opportunity to review your files?

4 A Yes, I had the opportunity.

5 Q And the document which is before you, Plaintiff's
6 Exhibit 20 for identification, did you find that in your
7 files yesterday?

8 A Yes.

9 Q Will you state briefly how you recall that document
10 coming to be in your files?

11 A Around the time Mr. Edwards signed for^u notes
12 he delivered this material to me.

13 Q Had you asked him to deliver that material to
14 you?

15 A Yes.

16 Q What use did you make of that material?

17 A I wanted to use this as material to support
18 his signing of four notes in front and on the back. And when
19 I saw this I found mistake in computation, so naturally
20 I corrected it only, only the mistake in computation.

21 Q Did you change the amount of any of the figures
22 that are reflected on this document?

23 A No, except this correct.

24 Q I show you Plaintiff's Exhibit 16 marked for
25 identification, I'm not sure whether it is in evidence or

not, and I ask whether Plaintiff's Exhibit 16 was prepared from Plaintiff's Exhibit 20 at your instructions?

A Yes.

MR. DEVINE: I offer both of those documents, your Honor.

THE COURT: Show them to counsel.

(Pause.)

MR. EDELSTEIN: I have no objection.

(Received.)

(Plaintiff's Exhibits 16 and 20 were received in evidence.)

THE COURT: Plaintiff's Exhibit 20 is just the same as Exhibit 16 with a computation correction?

THE WITNESS: Yes, sir.

THE COURT: Beyond that. Explain the difference.

THE WITNESS: When I saw --

Q Mr. Sinoto, let me ask a question so that the record is clear. The Xing out which appears on Plaintiff's Exhibit 20, do you know how that came to be on that sheet?

A Yes. When I saw this personal statement delivered by Mr. Edwards personally, I noticed that he didn't add the total figure of assets and other, on the grand total of

assets. So I found a mistake there, so I corrected on this paper.

Q And the corrective typing, was that placed on the document Plaintiff's Exhibit 20?

A Yes.

Q At your instructions?

A Yes.

Q In your office?

A That's right. And I showed consequently to Mr. Edwards the correction.

Q That you had made?

A Yes.

Q Did you change any other figure?

A No.

Q On Plaintiff's Exhibit 20?

A No.

MR. DEVINE: That is all I have, your Honor.

THE WITNESS: Excuse me. Only because of this mistake in the total, The bottom portion, the net worth portion was also reflecting that mistake. Therefore, I changed that too.

MR. DEVINE: No further questions, your Honor.

THE COURT: What do you want this for?

What do you want this statement for?

THE WITNESS: Mr. Edwards signed four notes and as I stated yesterday, Mr. Edwards personally wanted to also support these four notes and I asked him to give me the material to support his financial statement, and he gave me this financial statement.

THE COURT: What were you going to do with it?

THE WITNESS: I wanted to put this material together with the four notes. When I tried to obtain financial arrangement.

THE COURT: Who were you going to show it to?

THE WITNESS: I wanted to show it to my financial adviser.

THE COURT: Who is that?

THE WITNESS: Mr. Monash.

THE COURT: Who is Mr. Monash?

THE WITNESS: He has been my adviser at that time -- excuse me, he was my adviser at that time.

THE COURT: What was he going to do with this paper, Exhibits 20 and 16?

THE WITNESS: He was going to advise me what kind of note, what kind of material I should prepare in order to obtain financial arrangements.

THE COURT: He saw this before the notes were

prepared?

THE WITNESS: Almost at the same time.

THE COURT: If he was going to advise you what kind of notes to prepare he must have seen it before the notes --

THE WITNESS: I don't exactly recall the sequence of showing the material to him. But about the same time, according to my record, diary, May 2, 1972 we prepared, in other words, I instructed my secretary to type his personal statement. Around that time, which is exactly the time that Mr. Edwards signed notes. So naturally around that time I showed all the material to my adviser.

THE COURT: Then what did you do with it?

THE WITNESS: He told me to -- are you talking about the financial --

THE COURT: You showed them both together, I guess?

THE WITNESS: Yes. He mentioned to me that if any bank, such as Bankers Trust, ^{the} which I introduced Mr. Edwards, which also ~~knows~~ ^{know} Mr. Edwards' development of Devco Management, is willing to arrange a loan to me based on these notes, it might be very good at that time. So I naturally went to see an officer at the Bankers Trust to whom his name was Mr. Oji, to whom I once introduced Mr. Edwards. And right after that, Mr. Edwards and Mr. Oji

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2 began to talk about Nigerian Gas Liquification Project,
3 ^{with}
~~to~~ Simitomi Shoji.

4 Mr. Oji knew of my relationship with Simitomi
5 Shoji as well as their intention and Mr. Edwards' interest
6 to put Bankers Trust interest and Simitomi Shoji's
7 interest together. At that time we were talking about
8 development of gas liquification project in Nigeria.

9 Since Mr. Oji knew of these developments and
10 discussions my adviver thought that he might be the right
11 person to discuss about these financial arrangements.
12 Therefore I presented four notes together with this
13 letter to Mr. Oji and from his desk I called Mr. Edwards
14 and Mr. Edwards said of course, if Mr. Oji wants to do
15 it, fine. Naturally at that time Mr. Edwards was planning
16 to open an account at the Bankers Trust. However, that
17 opening of account wasn't consummated when I visited Mr. Oji
18 and got to ^{discuss the} ~~this~~ financial arrangement, therefore Mr. Oji
19 requested me to wait until Devco Management opens an
20 account with him.

21 So, therefore, of course, I didn't obtain the
22 financial arrangement from the Bankers Trust at that
23 time.

24 THE COURT: Why did you call Mr. Edwards from
25 Mr. Oji's desk?

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2 THE WITNESS: Mr. Oji requested me also to find
3 out if it was all right with him, Mr. Edwards, to consider
4 these notes. And I wanted to -- I think partly ^{at} my request,
5 I mentioned to Mr. Oji that I have ~~got~~ to call Mr. Edwards
6 from his office, so that he, Mr. Oji, can understand the
7 arrangement that I had with Mr. Edwards.

8 THE COURT: What arrangements did you have that you
9 wanted to tell Mr. Oji?

10 THE WITNESS: Exactly as I have testified yesterday,
11 that using these four notes as collateral to obtain finan-
12 cial arrangements.

13 THE COURT: I don't remember just where you
14 told me that you didn't present these notes to the bank as
15 they fell due?

16 THE WITNESS: At that time I didn't, because as
17 I said yesterday, that Mr. Edwards was trying to explain
18 to me that the moment financial arrangement of Devco Manage-
19 ment is arranged, ^{arranged later} ~~announced~~ with Certain-teed products,
20 then he ^{is} ~~is~~ going to honor ^{the notes} or either give me 50 per cent
21 of the company or make a financial arrangement above and
22 beyond \$50,000. Based on that understanding I have been
23 waiting until he tells me that either he will give me a
24 true amount, total amount, or ^{he} ~~you~~ will let me present these
25 four notes to the bank, and the moment, at the end of

1 June, 1972, the moment he told me that he cannot and he is
2 not going to give me that amount of shares of the company
3 and he is not going to pay and he said almost very bluntly
4 that take it or leave it, I immediately understood it
5 was a breach of my contract and agreement or understanding
6 with him. Therefore, I waited whether he will proceed to
7 make any good in correcting his statement. I waited
8 until I think September of 1972 to present four notes
9 to my bank.
10

11 THE COURT: In other words, at the time you took
12 these notes you knew he didn't have any money in the
13 corporation to pay, is that right?

14 THE WITNESS: That's right. Mr. Edwards has
15 been saying to me that though Devco didn't receive money
16 and he personally is trying to arrange a financial
17 arrangement, it may take a little more time. He said
18 possibly, and he repeated to me that Bankers Trust will
19 quite possibly take Devco shares in order to either give me
20 a cash payment or \$50,000 or make some arrangement so that
21 I eventually will obtain more than \$50,000 of funds
22 from Mr. Edwards.

23 THE COURT: When you pledged these notes with
24 the Bankers Trust you didn't tell them that the company had
25 no reason, is that right?

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2 THE WITNESS: ^{Yes} No, I told the whole story, as I just
3 explained to you. Mr. Oji of course was very much inter-
4 ested in the future of Devco project and he believed it
5 that in the very near future Devco will be able to obtain
6 enough funds to develop its project.

7 THE COURT: Was it your understanding with
8 Mr. Edwards that you would not present these notes without
9 talking to him about it?

10 THE WITNESS: Yes, Mr. Edwards and I discussed
11 this matter and he said he is going to arrange for the
12 cash payment sooner or later, but meantime, he said, he
13 can give me these four notes to use it as a collateral
14 to obtain a financial arrangement from anyone, including
15 the bank. And we have been quite repeatedly talking about
16 that matter, arrangement, and in the event that he
17 breaches -- of course at that time we didn't use that kind
18 of word --

19 THE COURT: He had no intention of breaching?

20 THE WITNESS: So, therefore, naturally as a ^{former} banker
21 he knew that in case he cannot of course meet that amount
22 when maturity dates of four notes come, that he must meet
23 with these demands.

24 THE COURT: Your main hope is that you wouldn't
25 cash these notes but that you'd get an interest in the

company?

THE WITNESS: That is right. Over 50 per cent. As I mentioned also yesterday, that since the beginning of my discussions with Mr. Edwards to help him to be a major driving force among minority groups businessmen^{and} see that he can eventually establish a major industry for minority group was my exact project that I have been working with Mr. Edwards.

And again, from time to time he used a different name. He talked about Northern Recycling Corporation. He talked about Waste Reclamation Corporation. He talked about Devco Investment and then Devco Management.

But as far as I am concerned, and that is another reason why I requested him not to use my name so freely in his representations, because my interest was to personally assist him to be a businessman, to develop major industry for minority groups. I had no doubt that he would be able to accomplish that by developing Devco Management.

THE COURT: How did you happen to pick the sum of \$50,000?

THE WITNESS: \$50,000 came about when we talked about his need. At that time we talked about the beginning of April or end of March of 1972, we talked about how much amount of money that he may need and I may need.

1 elbr
2 He talked about possibly \$60,000. So I said I need about
3 \$50,000.

4 THE COURT: You needed \$50,000?

5 THE WITNESS: ~~Yes.~~ ^{No} Not necessarily need^{ed}, but
6 I believed that ~~I needed~~ \$50,000 based on my time spent,
7 et cetera, is appropriate. Because he said ~~he considers~~
8 ~~his contribution~~, based on his contribution he believes
9 he can obtain the \$60,000. So therefore I said I rather
10 liked to obtain \$50,000.

11 THE COURT: But your main objective was a per-
12 centage of the business?

13 THE WITNESS: Yes. ^W ~~In~~ which I believed, at that
14 time, that the moment after he received a million dollars
15 worth of commitment from Certain-teed Products it was a
16 valuable asset.

17 THE COURT: Thank you.

18 MR. EDELSTEIN: No questions.

19 (Witness excused.)

20 MR. DEVINE: No further questions, your Honor.

21 That concludes rebuttal, your Honor,
22 except I would like to offer a portion of Mr. Edwards'
23 deposition as rebuttal testimony. The section that I
24 would like to offer is from page 37 line 6 through page 42
25 line 12.

1 elbr

210

2 THE COURT: Do you want to read it?

3 MR. DEVINE: It is lengthy. I can do that.

4 I would mark the whole deposition if you prefer and offer
5 only that portion.

6 THE COURT: Mark the deposition.

7 MR. EDELSTEIN: Yes, that is a lot easier.

8 THE COURT: I will read it.

9 (Plaintiff's Exhibit 21 was received in
10 evidence.)

11 MR. DEVINE: There is some discussion in that
12 section of documents marked 10, 10-A and 11. Those docu-
13 ments are in evidence as 13 and 14 in this case, your
14 Honor.

15 THE COURT: Just tell me what the gist of this
16 is.

17 MR. DEVINE: This has to do with this booklet
18 which is in two parts, Plaintiff's Exhibit 13 and 14
19 in evidence. I feel that this portion of the
20 deposition is contradictory to the testimony which
21 Mr. Edwards gave yesterday on this subject and I would like
22 to have the contradiction part of the record.

23 THE COURT: This has to do exclusively with
24 these two books?

25 MR. DEVINE: Yes, sir.

127a

MR. EDELSTEIN: I have no objection, except that Mr. Edwards completely expanded upon whatever statements he makes in here.

THE COURT: That is for sure.

MR. DEVINE: That concludes the plaintiff's case.

THE COURT: Do you want to make some argument or what?

MR. DEVINE: Your Honor, I would follow the Court's suggestion as to whether we make some closing argument at this time or whether we submit post trial papers. I am really neutral as to what is best under the circumstances.

THE COURT: Why don't you submit post trial papers and why don't I just give you my present view as to how I see the issues, not by way of decision.

It doesn't seem to me that the issue of consideration is very material. Obviously this plaintiff did some work for the group of people that ultimately emerged as Devco. And if the corporation -- and the corporation got some benefit from it or could be deemed or could have thought it had benefit from it. And therefore if the corporation wanted to issue an -- to pay for that benefit, I don't see that consideration is much in issue.

I accept Mr. McNally's testimony and therefore

conclude that the note when signed was in its present condition.

However, that doesn't necessarily mean I believe Mr. Edwards was deliberately telling an untruth when he testified to the contrary. He may by this time have persuaded himself that that was the fact. What the issue here seems to me is basically, what is the meaning of the testimony I have just heard from the plaintiff. It is quite clear this is not an orthodox note. I have not fully made up my own mind where the truth lies as between what the plaintiff says the purpose of the note was and what Mr. Edwards says the purpose of the note was. Mr. Edwards says the purpose of the note was purely to show somebody that the plaintiff was likely to get some money from somebody, and therefore encourage some unknown person to lend him some money. Not in the form of collateral. He coined a phrase which I have not heard yet, I think it was secondary collateral. Be that as it may, it was just by way of encouraging some lender to pass money to the plaintiff but not accepting the notes in collateral. It is of course somewhat supported by the plaintiff's testimony that he called Mr. Edwards and asked him if it was agreeable to him if he discussed the notes with the Bankers Trust officer.

128a-1

PLAINTIFF'S EXHIBIT

1

11702

\$12,500.00

DOLLARS	23
CENTS	126

Forty-five days

the order of Nori Sinoto

Twelve thousand five hundred and no/100

Payable at Franklin National Bank 15 Columbus Circle, New York, NY 10023

April 26, 1972

after date promise to pay to

This is note No. 1 of a series of 4 notes. Upon default in the payment of any one of these notes or any other note or notes of the maker and/or endorsers and/or guarantors hereof, held or acquired by holder hereof all of the aforesaid notes shall immediately become due and payable without prior notice or demand.

The makers, endorsers and guarantors of this note hereby waive presentment for payment, demand, notice of non-payment and dishonor, protest, and notice of protest; waive trial by jury in any action or proceeding arising on, out of, under or by reason of this note; consent to any renewals, extensions and partial payments of this note or the indebtedness for which it is given without notice to them, and consent that no such renewals, extensions or partial payments shall discharge any party hereto from liability hereon in whole or in part. If a petition under any provision of the Bankruptcy Act or any other insolvency statute for any relief thereunder shall be filed by or against any maker, endorser or guarantor hereof, then this note and all other existing obligations of every kind of each maker or endorser hereof to the holder hereof shall become immediately due and payable. If this note be not paid when due and if it be placed with an attorney for collection, the maker, makers, endorsers and guarantors agree to pay all costs of collection, including an attorney's fee of 20% of the amount of this note, which is hereby agreed to be just and reasonable and which shall be added to the amount due under this note and recoverable with the amount due under this note. If any endorser or guarantor of this note shall pay the amount of the same to the holder thereof at maturity and thereafter shall place the same with an attorney for collection against the maker, makers, prior endorsers, guarantors or any of them, then they agree to pay to said endorser or guarantor all costs of collection, including an attorney's fee of 20% which is hereby agreed to be just and reasonable and which shall be added to the amount due under this note and recoverable with the amount on this note. Interest on this note after maturity shall be due and payable at the rate of two per cent per month.

Value Received with interest at 7%

Due June 12, 1972

Devo Management Inc.

Chief Executive Officer

031 060841

PLAINTIFF'S EXHIBIT

1

The undersigned endorser have examined, are familiar with, and hereby jointly and severally agree to be bound by all the terms and conditions of the within note and that the time for the payment of said note or indebtedness for which it was given may be extended, partially repaid and partially or fully extended without notice or assent by the undersigned or any of them and without affecting the liability of the undersigned or any of them, and the undersigned waive presentment for payment, demand, notice of dishonor, protest and notice thereof, and trial by jury in any action on this note.

NAME Weyland E. Ward

BUS. ADDRESS 138-20 175th Street

HOME ADDRESS Springfield Gardens, N.Y.

NAME _____

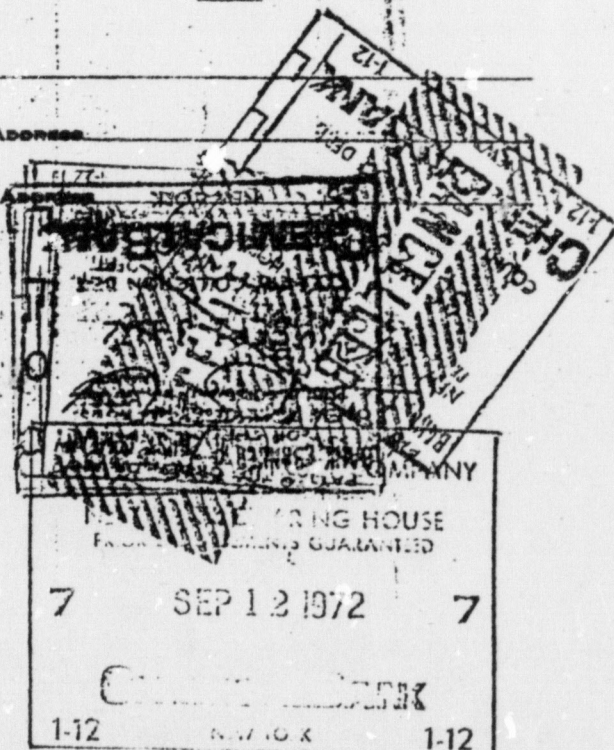
BUS. ADDRESS _____

HOME ADDRESS _____

NAME _____

BUS. ADDRESS _____

HOME ADDRESS _____



PLAINTIFF'S EXHIBIT

2

157 98

\$12,500.00

DOLLARS	98
1257	CENTS

Sixty-five days

the order of Nori Sinoto

Twelve thousand five hundred and no/100 -----Dollars

Payable at Franklin National Bank 15 Columbus Circle, New York, NY 10023

This is note No. 2 of a series of 4 notes. Upon default in the payment of any one of these notes or any other note or notes of the maker and/or endorsers and/or guarantors hereof, held or acquired by holder hereof all of the aforesaid notes shall immediately become due and payable without prior notice or demand.

The makers, endorsers and guarantors of this note hereby waive presentment for payment, demand, notice of non-payment and dishonor, protest, and notice of protest; waive trial by jury in any action or proceeding arising on, out of, under or by reason of this note; consent to any renewals, extensions and partial payments of this note or the indebtedness for which it is given without notice to them, and consent that no such renewals, extensions or partial payments shall discharge any party hereto from liability hereon in whole or in part. If a petition under any provision of the Bankruptcy Act or any other insolvency statute for any relief thereunder shall be filed by or against any maker, endorser or guarantor hereof, then this note and all other existing obligations of every kind of each maker or endorser hereof to the holder hereof shall become immediately due and payable. If this note be not paid when due and if it be placed with an attorney for collection, the maker, makers, endorsers and guarantors agree to pay all costs of collection, including an attorney's fee of 20% of the amount of this note, which is hereby agreed to be just and reasonable and which shall be added to the amount due under this note and recoverable with the amount due under this note. If any endorser or guarantor of this note shall pay the amount of the same to the holder thereof at maturity and thereafter shall place the same with an attorney for collection against the maker, makers, prior endorsers, guarantors or any of them, then they agree to pay to said endorser or guarantor all costs of collection, including an attorney's fee of 20%; which is hereby agreed to be just and reasonable and which shall be added to the amount due under this note and recoverable with the amount on this note. Interest on this note after maturity shall be due and payable at the rate of two per cent per month.

Value Received with interest at ~~6 1/2~~ 7%

Due June 30, 1972

Decco Management Inc.

Richard J. Edwards

Chief Executive Officer

PLAINTIFF'S EXHIBIT

2

The undersigned endorser have examined, are familiar with, and hereby jointly and severally agree to be bound by all the terms and conditions of the within note and that the time for the payment of said note or indebtedness for which it was given may be extended, partially repaid and partially or fully extended without notice or assent by the undersigned or any of them and without affecting the liability of the undersigned or any of them, and the undersigned give presentment for payment, demand, notice of dishonor, protest and notice thereof, and trial by jury in any action on this note.

NAME *Richard M. Gandy*

BUS. ADDRESS 138-20 175th Street

HOME ADDRESS Springfield Gardens, N.Y.

NAME _____

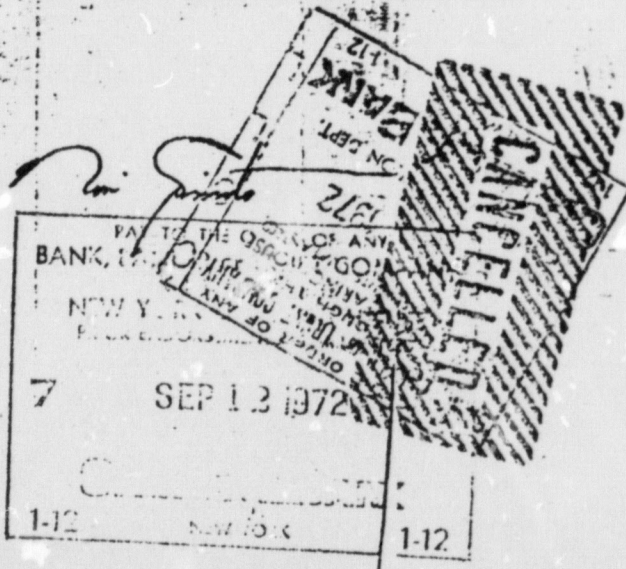
BUS. ADDRESS _____

HOME ADDRESS _____

NAME _____

BUS. ADDRESS _____

HOME ADDRESS _____



PLAINTIFF'S EXHIBIT 3-NOTE #3 TO NORI SINOTO; \$12,500

PLAINTIFF'S EXHIBIT

3

20659

85

\$12,500.00	DOLLARS	59	NSP 1-12	April 26, 1972
Eighty-five days	12706	CENTS		we

the order of Nori Sinoto

Twelve thousand five hundred and no/100 -----Dollars

Payable at Franklin National Bank 15 Columbus Circle, New York, NY 10023

This is note No. 3 of a series of 4 notes. Upon default in the payment of any one of these notes or any other note or notes of the maker and/or endorsers and/or guarantors hereof, held or acquired by holder hereof all of the aforesaid notes shall immediately become due and payable without prior notice or demand.

The makers, endorsers and guarantors of this note hereby waive presentment for payment, demand, notice of non-payment and dishonor, protest, and notice of protest; waive trial by jury in any action or proceeding arising on, out of, under or by reason of this note; consent to any renewals, extensions and partial payments of this note in the indebtedness for which it is given without notice to them, and consent that no such renewals, extensions or partial payments shall discharge any party hereto from liability hereon in whole or in part. If a petition under any provision of the Bankruptcy Act or any other insolvency statute for any relief thereunder shall be filed by or against any maker, endorser or guarantor hereof, then this note and all other existing obligations of every kind of each maker or endorser hereof to the holder hereof shall become immediately due and payable. If this note be not paid when due and if it be placed with an attorney for collection, the maker, makers, endorsers and guarantors agree to pay all costs of collection, including an attorney's fee of 20% of the amount of this note, which is hereby agreed to be just and reasonable and which shall be added to the amount due under this note and recoverable with the amount due under this note. If any endorser or guarantor of this note shall pay the amount of the same to the holder thereof at maturity and thereafter shall place the same with an attorney for collection against the maker, makers, prior endorsers, guarantors or any of them, then they agree to pay to said endorser or guarantor all costs of collection, including an attorney's fee of 20% which is hereby agreed to be just and reasonable and which shall be added to the amount due under this note and recoverable with the amount on this note. Interest on this note after maturity shall be due and payable at the rate of two per cent per month.

Value Received with interest at 8% - 7% ----- Devo Management Inc.

Due July 20, 1972

Chief Executive Officer

PLAINTIFF'S EXHIBIT

3

The undersigned endorser have examined, are familiar with and hereby jointly and severally agree to be bound by all the terms and conditions of the within note and that the time for the payment of said note or indebtedness for which it was given may be extended, partially repaid and partially or fully extended without notice or assent by the undersigned or any of them and without affecting the liability of the undersigned or any of them, and the undersigned waive presentment for payment, demand, notice of dishonor, protest and notice thereof, and trial by jury in any action on this note.

NAME

BUS. ADDRESS

138-20 175th Street

HOME ADDRESS

Springfield Gardens, N.Y.

NAME

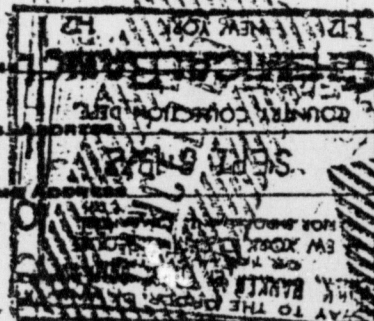
BUS. ADDRESS

HOME ADDRESS

NAME

BUS. ADDRESS

HOME ADDRESS



BANK

SEP 13 1972

1-12

1-12

PLAINTIFF'S EXHIBIT

4

255 20

\$12,500.00	DOLLARS	20	N.P. 1-122	April	26,	19 72
One hundred five days	12755	CENTS		1- after date	we	promise to pay to
the order of Nori Sinoto						
Twelve thousand five hundred and no/100 ----- Dollars						
Payable at Franklin National Bank 15 Columbus Circle, New York, NY 10023						
<p>This is note No. <u>4</u> of a series of <u>4</u> notes. Upon default in the payment of any one of these notes or any other note or notes of the maker and/or endorsers and/or guarantors hereof, held or acquired by holder hereof all of the aforesaid notes shall immediately become due and payable without prior notice or demand.</p> <p>The makers, endorsers and guarantors of this note hereby waive presentment for payment, demand, notice of non-payment and dishonor, protest, and notice of protest; waive trial by jury in any action or proceeding arising on, out of, under or by reason of this note; consent to any renewals, extensions and partial payments of this note or the indebtedness for which it is given without notice to them, and consent that no such renewals, extensions or partial payments shall discharge any party hereto from liability hereon in whole or in part. If a petition under any provision of the Bankruptcy Act or any other insolvency statute for any relief thereunder shall be filed by or against any maker, endorser or guarantor hereof, then this note and all other existing obligations of every kind of each maker or endorser hereof to the holder hereof shall become immediately due and payable. If this note be not paid when due and if it be placed with an attorney for collection, the maker, makers, endorsers and guarantors agree to pay all costs of collection, including an attorney's fee of 20% of the amount of this note, which is hereby agreed to be just and reasonable and which shall be added to the amount due under this note and recoverable with the amount due under this note. If any endorser or guarantor of this note shall pay the amount of the same to the holder thereof at maturity and thereafter shall place the same with an attorney for collection against the maker, makers, prior endorsers, guarantors or any of them, then they agree to pay to said endorser or guarantor all costs of collection, including an attorney's fee of 20% which is hereby agreed to be just and reasonable and which shall be added to the amount due under this note and recoverable with the amount on this note. Interest on this note after maturity shall be due and payable at the rate of two per cent per month.</p>						
Value Received with interest at 5% 7%						
Due August 9, 1972				Devco Management, Inc. <i>[Signature]</i> Chief Executive Officer		

PLAINTIFF'S EXHIBIT

4

The undersigned endorsers have examined, are familiar with and hereby jointly and severally agree to be bound by all the terms and conditions of the within note and that the time for the payment of said note or indebtedness for which it was given may be extended, partially repaid and partially or fully extended without notice or assent by the undersigned or any of them and without affecting the liability of the undersigned or any of them, and the undersigned waive presentment for payment, demand, notice of dishonor, protest and notice thereof, and trial by jury in any action on this note.

NAME

BUS. ADDRESS

138-20 175th Street

HOME ADDRESS

Springfield Gardens, N.Y.

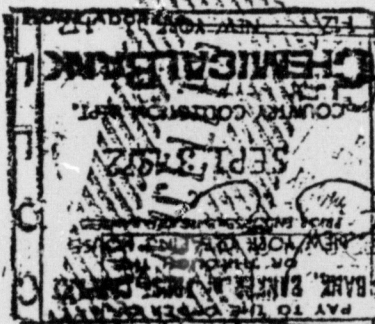
NAME

BUS. ADDRESS

HOME ADDRESS

NAME

BUS. ADDRESS



7

SEP 12 1972

7

1-12

1-12

1-12

PLAINTIFF'S EXHIBIT #5 - LETTER TO NORI SINOTO
FROM DEIGHTON O. EDWARDS, JR., DATED April 26, 1972 ⁵

DEVCO MANAGEMENT INC.

April 26, 1972

Nori Sinoto
8 East 62nd Street
New York, NY 10021

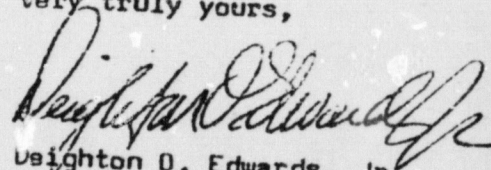
Dear Mr. Sinoto:

We are forwarding herewith four promissory notes, listed below, in consideration of your services rendered as executive advisor to Devco Management Inc.

<u>No.</u>	<u>Dated</u>	<u>Amount</u>	<u>Due Date</u>
1	April 26, 1972	\$12,500.00	June 12, 1972
2	April 26, 1972	\$12,500.00	June 30, 1972
3	April 26, 1972	\$12,500.00	July 20, 1972
4	April 26, 1972	\$12,500.00	August 9, 1972

For your information, Mrs. Selma Cohen is in charge of our account at Franklin National Bank.

Very truly yours,


Deighton O. Edwards, Jr.
Chief Executive Officer

Enclosures



PLAINTIFF'S EXHIBIT 16-PERSONAL STATEMENT OF
DEIGHTON O. EDWARDS, JR., AS OF February, 1972

PERSONAL STATEMENT OF
DEIGHTON O. EDWARDS, JR.
As of February, 1972

ASSETS

Cash on hand and in Bank	\$ 1,500.00
Cash in other Banks	4,800.00
Accounts Receivable	<u>27,000.00</u>
	\$33,300.00

Other

Automobiles (2)	\$ 1,500.00
Life Insurance (Cash Value)	1,000.00
Real Estate (Appraised)	28,000.00
Other Securities (Registered & Non-registered)	<u>49,000.00</u>
	\$79,500.00

\$112,800.00

LIABILITIES

Accounts Payable

Bank Loans	\$ 4,500.00
Bank Loans (Due 180 days)	1,500.00
Others (Due 180 days)	13,000.00
Note	<u>250.00</u>
	\$19,250.00

Other

Mortgages	\$18,000.00
Net Worth	<u>75,550.00</u>
	\$93,550.00

\$112,800.00

The above statement represents my personal financial condition.

Signed

Deighton O. Edwards, Jr.
Deighton O. Edwards, Jr.

OPINION

Original

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
MORI SINOTO,

Plaintiff,

- against -

DEVCO MANAGEMENT, INC. and
DEIGTON O. EDWARDS, JR.,

Defendants.
-----X

A P P E A R A N C E S :

BUTCHSKY, SCHWENKE & DEVINE
Attorneys for Plaintiff
230 Park Avenue
New York, New York 10017
By: RICHARD C. DEVINE,

Of Counsel

MARVIN I. EDELSTEIN
Attorney for Defendants
55 Liberty Street
New York, New York 10005

#41045
OPINION

73 Civ. 25

✓
S.D.C.N.Y.

AUG 1 1 08 PM '74

FILED
U.S. DISTRICT COURT

KNAPP, D.J.

This case is peculiarly sui generis. The testimony of the parties is anything but clear. Relying almost exclusively upon plaintiff's testimony, I find the following to be the factual situation. Plaintiff, who held himself out as a business advisor skilled in the creation of new enterprises, was in the habit of working on a contingent basis, looking for his compensation to ownership equity in enterprises he was instrumental in creating. He had an arrangement with defendant Edwards whereby he would receive 50% of a corporation to be organized for the conduct of a business jointly fathered by plaintiff and Edwards. At some point, plaintiff being in need of funds, it was agreed that Edwards would issue some \$50,000 in notes (here sued on) which could be used as collateral to assist plaintiff in obtaining temporary financing from others. It was understood, however, that plaintiff would not present or display the notes to anyone without defendant Edwards' specific permission. The notes - with such permission - were so displayed on at least one occasion but did not have the desired result. Some time later, when it became apparent that there never would be a business of which plaintiff could have 50%, he presented the notes for payment. Defendant Edwards, asserting various - mostly irrelevant - defenses, declined to honor them.

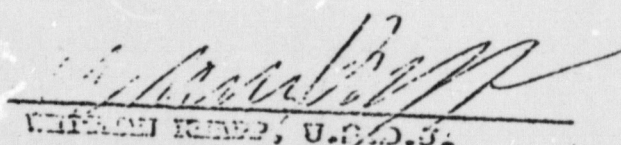
It is not at all clear why the parties thought that these notes could be used as a means of raising cash. Had they been so used, the rights of third parties would have intervened, and the situation would have been entirely different. However, although I can come to no firm conviction as to what the parties did intend, it seems to me clear beyond peradventure that they did not intend to convert plaintiff's anticipated 50% equity position into a \$50,000 debt and that neither party considered these documents to be notes in any conventional sense. The rights of no third parties having intervened, I see no reason why the original intention of the parties should not be given effect.

In brief the plaintiff, following his customary course, conducted his dealings with the defendant Edwards in the hope of obtaining a 50% ownership in a successful enterprise. Success did not eventuate, and plaintiff had nothing to show for his efforts. It follows that judgment should enter dismissing the complaint.

SO ORDERED.

Dated: New York, New York

July 31, 1974.


WILLIAM K. MILLER, U.S.D.J.

JUDGMENT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x
NORI SINOTO,

Plaintiff,

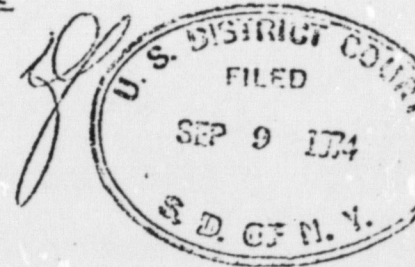
-against-

DEVCO MANAGEMENT, INC. and
DEIGHTON O. EDWARDS, JR.,

Defendants.
----- x

73 Civ. 25 (W.K.)

JUDGMENT



----- x
This action came on for trial before the Court on March 11th and March 12, 1974, Hon. Whitman Knapp, District Judge presiding, and the issues having been duly tried, and a decision having been duly rendered, it is

ORDERED, ADJUDGED and DECREED, that the complaint herein be and the same hereby is dismissed on the merits and that costs be awarded to the defendants.

Dated: New York, New York
September 9th 1974.

Clerk of the Court

MICROFILM

SEP 10 1974

NOTICE OF APPEAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- X
NORI SINOTO,

Plaintiff,

-against-

DEVCO MANAGEMENT, INC. and
DEIGHTON O. EDWARDS, JR.,

Defendants.
----- X

:
:
73 Civ. 25 WK

:
:
NOTICE OF
APPEAL

NOTICE is hereby given that Nori Sinoto, plaintiff
above named, hereby appeals to the United States Court of Appeal
for the Second Circuit from the order of Hon. Whitman Knapp
filed August 1, 1974, ordering judgment dismissing the complaint
and from the judgment entered in accordance therewith.

Dated: New York, New York
August 30, 1974

BUTOWSKY, SCHWENKE & DEVINE

By Michael C. Devine
A member of the firm
Attorneys for plaintiff
230 Park Avenue
New York, New York 10017
(212) 725-5360

TO: CLERK OF UNITED STATES DISTRICT
COURT FOR SOUTHERN DISTRICT OF NEW YORK
40 Foley Square
New York, New York 10007

MARVIN I. EDELSTEIN, ESQ.
55 Liberty Street
New York, N. Y. 10005

United States Court of Appeals

FOR THE
SECOND CIRCUIT

At a Stated Term of the United States Court of Appeals, in and for the Second Circuit, held at the United States Courthouse in the City of New York, on the thirteenth day of March one thousand nine hundred and seventy-five.

Present:

HON. HENRY J. FRIENDLY
HON. WILLIAM H. TIMBERS
Circuit Judges
HON. JOHN R. BARTELS
District Judge Sitting by Designation

~~Circuit Judge~~

NORI SINOTO,

Appellant,

v.

DEVCO MANAGEMENT, INC. and
DEIGHTON O. EDWARDS, JR.,

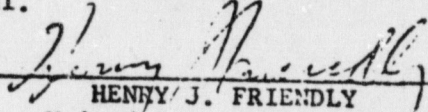
Appellees.

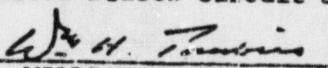
74-2215

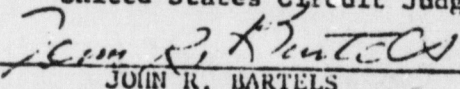
Appeal from the United States District Court for the Southern District of New York.

This cause came on to be heard on the transcript of record from the United States District Court for the Southern District of New York, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is vacated, and the case is remanded to the District Court with instructions to make appropriate findings of fact and conclusions of law, pursuant to Fed. R. Civ. P. 52(a), and to enter a fresh judgment thereon. No costs in this Court on the instant appeal.


HENRY J. FRIENDLY
United States Circuit Judge


WILLIAM H. TIMBERS
United States Circuit Judge


JOHN R. BARTELS
United States District Judge,
Sitting by Designation

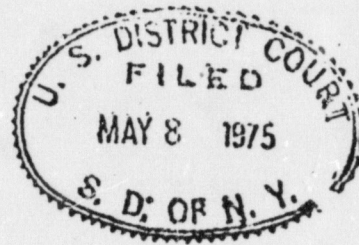
(A true copy,

(If Amended)

144a

APR 7 10 01 AM '75
S.D. OF N.Y.

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NORI SINOTO,

Plaintiff,

- against -

DEVCO MANAGEMENT, INC. and
DEIGHTON O. EDWARDS, JR.,

Defendants.

SUPPLEMENTAL OPINION,
FINDINGS OF FACT AND
CONCLUSIONS OF LAW

73 Civ. 25

A P P E A R A N C E S :

BUTOWSKY, SCHWENKE & DEVINE
Attorneys for Plaintiff
230 Park Avenue
New York, New York 10017
By: MICHAEL C. DEVINE, ESQ.,
Of Counsel

MARVIN I. EDELSTEIN
Attorney for Defendants
55 Liberty Street
New York, New York 10005

SUPPLEMENTAL OPINION,
FINDINGS OF FACT AND
CONCLUSIONS OF LAW

KNAPP, D.J.

As earlier observed, this case is sui genesis. It started off as a simple suit on four notes totaling \$50,000. Had plaintiff simply offered the notes, and put defendants to their defense, I might well have found for plaintiff. However plaintiff over strenuous and repeated objections of the defendants - elected to do otherwise, and offered his own testimony about the background to the issuance of the notes. It is such testimony that led to his undoing. Aside from certain expert evidence, which was quite clear and concise, most of the evidence in the case consisted of the testimony of the plaintiff and of the individual defendant. None of that testimony made any sense at all. This was not because the parties were not trying to be truthful. It was simply because it was beyond the capacity of either of them to express in language comprehensible to an ordinary mortal the fantasy world in which they were living. However, mindful of the command of Fed. R. Civ. P. 52(a) and of the mandate of the Court of Appeals in this particular case, I shall make findings of fact on all material issues. Except as otherwise noted, I shall rely exclusively on the testimony of the plaintiff. This is not because I find his testimony any more sensible than that of the individual defendant. It is simply because since I am finding against plaintiff, it seems meet to rely upon his testimony. I accordingly find as follows:

SUPPLEMENTAL OPINION,
FINDINGS OF FACT AND
CONCLUSIONS OF LAW

1. The testimony of Detective McNally was wholly credible and I therefore find that the so-called notes when executed were in substantially the form as when offered in evidence.

2. Plaintiff and individual defendant (hereinafter defendant) had a business arrangement whereby plaintiff was to be half-owner of any business or profit resulting from the efforts of the defendant acting upon advice proffered by plaintiff.

3. There was never any other financial arrangement between plaintiff and defendant.

4. The so-called notes were not intended to discharge any indebtedness from defendant to plaintiff or in any way to affect the financial arrangements between them.

5. At the time the notes were executed the assets of the corporate defendant were zero, which fact was known to all concerned (based on testimony of Moore as well as of plaintiff and defendant).

6. It was not intended by anyone that the notes would impose any financial obligation upon either of the defendants.

7. The purpose of the notes was to permit plaintiff to raise funds to tide him over until he could realize cash from his half interest in defendant's enterprises.

8. Plaintiff never intended to defraud any bank or other person. As near as I can gather, he was confident that any sensible bank would readily advance funds on the expectation that plaintiff's

SUPPLEMENTAL OPINION,
FINDINGS OF FACT AND
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one-half interest in any enterprise founded upon his advice would have substantial value, and that the notes were only necessary to satisfy the bank's own bureaucratic needs (based on testimony of plaintiff and defendant).

Based upon the foregoing, I make the following conclusions of law.

a. The notes were not intended to impose financial obligations upon either defendant and were and are therefore void.

b. Regardless of the validity of conclusion (a), since the notes were not given in discharge of any pre-existing obligation and, indeed, had no effect whatever upon the financial relationship of the parties, they were and are void for want of consideration.

c. If both the foregoing conclusions should be reversed, defendants would - in light of finding of fact #8 above - have no defense of unclean hands.

Let judgment enter dismissing the complaint with costs to defendants.

SO ORDERED.

Dated: New York, New York

May 11, 1975.


WHITMAN KNAPP, U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

NORI SINOTO,

Plaintiff,

- against -

DEVCO MANAGEMENT, INC. and
DEIGHTON O. EDWARDS, JR.,

Defendants.

73 Civ. 25 WK

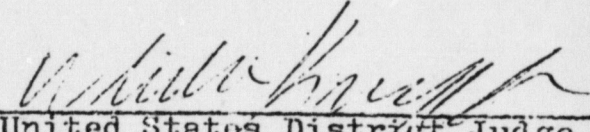
JUDGMENT

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This action having come on for trial before the Court on March 11 and 12, 1974, Hon. Whitman Knapp, District Judge presiding, and the issues having been duly tried, and a decision having been duly entered and an order dismissing the complaint having been entered on September 9, 1974, and the plaintiff having appealed therefrom and said appeal having regularly come on for argument before the United States Court of Appeals for the Second Circuit and an order having issued therefrom on March 13, 1975 vacating the judgment heretofore entered herein and remanding the cause to the District Court with instructions to make appropriate findings of fact and conclusions of law and to enter a fresh judgment thereon and the District Court having rendered a supplemental opinion pursuant thereto on May 8th, 1975, it is

ORDERED, ADJUDGED and DECREED, that the complaint herein be and the same hereby is dismissed on the merits and that costs be awarded to the defendants.

Dated, New York, New York
May 27, 1975


United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
NORI SINOTO,

Plaintiff, : 73 Civ. 25 WK

-against- :

DEVCO MANAGEMENT, INC. and
DEIGHTON O. EDWARDS, JR., :

Defendants. :
-----X

NOTICE OF APPEAL

NOTICE is hereby given that Nori Sinoto, plaintiff
above named, hereby appeals to the United States Court of Appeals
for the Second Circuit from the order of Hon. Whitman Knapp
filed May 8, 1975, ordering judgment dismissing the complaint
and from the judgment entered in accordance therewith, dated
May 28, 1975.

Dated: New York, New York
June 27, 1975.

SCHWENKE & DEVINE

By

Michael C. Devine
A member of the firm
Attorneys for plaintiff
230 Park Avenue
New York, New York 10017
(212) 725-5360

TO: CLERK OF UNITED STATES DISTRICT
COURT FOR SOUTHERN DISTRICT OF
NEW YORK
40 Foley Square
New York, New York 10007

MARVIN I. EDELSTEIN, ESQ.
55 Liberty Street
New York, New York 10005

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Appendix
IS HEREBY ADMITTED.

DATED: Oct. 2, 1975
Frances F. Friedman
Harvin J. Edelstein

Attorney for Appellees